

## CIVIL LOCAL RULES

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# **CIVIL LOCAL RULES**

## **I. SCOPE OF RULES - ONE FORM OF ACTION**

### **LR 1: SCOPE AND PURPOSE OF RULES**

#### **LR 1.1 TITLE; EFFECTIVE DATE; DEFINITIONS; COMPLIANCE AND CONSTRUCTION**

##### **A. Title.**

These are the Civil Local Rules of Practice for the United States District Court for the Northern District of Georgia. They may be cited as "LR \_\_, NDGa."

##### **B. Effective Date; Transitional Provision.**

These rules govern all civil actions and proceedings pending on or commenced after April 15, 1997, except to the extent that in the opinion of the district judge to whom the case is assigned, their application in an action or proceeding pending on April 15, 1997, would not be feasible or would work an injustice.

##### **C. Scope of Rules; Construction.**

These rules supplement the Federal Rules of Civil Procedure and shall be construed so as to be consistent with those Rules and to promote the just, efficient, and economical determination of every action and proceeding, except that the rules shall not apply to those proceedings where they may be inconsistent with rules or provisions of law specifically applicable thereto.

##### **D. Definitions.**

(1) The word "court" refers to the United States District Court for the Northern District of Georgia and not to any particular judge or magistrate judge of the court.

(2) The word "judge" refers to any United States District Judge exercising jurisdiction with respect to a particular action or proceeding in this court.

(3) The words "magistrate judge" refer to any full-time or part-time United States Magistrate Judge exercising jurisdiction under 28 U.S.C. § 636, consistent with the policies adopted by this court.

(4) The words "bankruptcy court" refer to the unit of this court known as the United States Bankruptcy Court for the Northern District of Georgia.

(5) The words "bankruptcy judge" refer to any United States Bankruptcy Judge exercising jurisdiction by referral from this court with respect to actions or proceedings filed in the United States Bankruptcy Court.

(6) The word "clerk" refers to the District Court Clerk and deputy clerks.

(7) The words "bankruptcy clerk" refer to the Bankruptcy Court Clerk and deputy bankruptcy clerks.

## **II. COMMENCEMENT OF ACTION: SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS**

### **LR 3: COMMENCEMENT OF ACTION**

#### **LR 3.1 DIVISIONS OF COURT - VENUE**

**A. Four Divisions.** The Northern District of Georgia consists of four (4) divisions as outlined and described in 28 U.S.C. § 90. Refer to LR App. A, I, for a list of counties comprising each division.

#### **B. Venue and Transfer of Venue for Civil Actions.**

##### **(1) Defendants.**

(a) Except as otherwise provided, any civil action, not of a local nature, against a defendant or defendants, all of whom reside in this district, must be brought in the division where the defendant or defendants reside. If the defendants live in different divisions, the action may be brought in any division in which one (1) defendant resides.

(b) Any such action against two (2) or more defendants residing in different districts within the State of Georgia may be brought against all defendants in any division of this district where at least one defendant resides.

**(2) Plaintiffs.** Except as otherwise provided, any diversity action brought in this district on the basis of plaintiff's or plaintiffs' residence within the district must be filed in the division where plaintiff or plaintiffs reside. If the plaintiffs reside in different divisions, the action may be brought in any division in which one (1) plaintiff resides.

**(3) Where the Cause of Action Arose.** Any civil action brought in this district on the grounds that the cause of action arose here must be filed in a division of the district wherein the activity occurred.

**(4) Transfer of Venue.** Any civil action may, by order of this court, be transferred to any other place or division within the district for trial.

#### **LR 3.2 ADVANCE PAYMENT OF FILING FEES**

**A. Advance Payment Generally Required.** Advance payment of fees is required before the clerk will file any civil action, suit, or proceeding. A notice of appeal

shall be filed upon receipt. Persons wishing to proceed *in forma pauperis* may obtain the necessary papers at the public filing counter.

**B. Failure to Remit Fee.** Pleadings received by the clerk for filing with the filing fee not attached shall be marked "received", but they shall not be filed. The clerk will notify counsel and/or the parties that the pleadings are being held and that they will not be filed until the filing fee is received or an order is issued allowing the pleadings to be filed *in forma pauperis*.

### **LR 3.3 CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT**

**A. Purpose and Scope.** In order to enable judges and magistrate judges of this court to evaluate possible disqualification or recusal, counsel for all private (nongovernmental) parties in civil cases must at the time of first appearance file with the clerk a certificate containing:

(1) A complete list of the parties and the corporate disclosure statement required by FRCP 7.1.

(2) A complete list of other persons, associations, firms, partnerships, or corporations having either a financial interest in or other interest which could be substantially affected by the outcome of this particular case.

(3) A complete list of each person serving as a lawyer in this proceeding. Where the particular circumstances of the case may warrant such action, counsel may petition the court for permission to file the certificates *in camera* or under seal.

**B. Duties of Counsel.** Each attorney shall have a continuing duty to notify the court of any additions to or deletions from the certificate.

**C. Form of Certificate.** The form of the certificate, which shall be signed and dated, shall be as follows:

[style and number of case]

#### **Certificate of Interested Persons and Corporate Disclosure Statement**

(1) The undersigned counsel of record for a party to this action certifies that the following is a full and complete list of all parties in this action, including any parent corporation and any publicly held corporation that owns 10% or more of the stock of a party: \_\_\_\_\_

(2) The undersigned further certifies that the following is a full and complete list of all other persons, associations, firms, partnerships, or corporations having



either a financial interest in or other interest which could be substantially affected by the outcome of this particular case: \_\_\_\_\_

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(3) The undersigned further certifies that the following is a full and complete list of all persons serving as attorneys for the parties in this proceeding:

Submitted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Counsel for

## **LR 5: SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS**

### **LR 5.1 ELECTRONIC AND PAPER DOCUMENTS; FORMAT; LEGIBILITY**

#### **A. Electronic.**

(1) Documents in civil and criminal cases will be filed, signed and verified by electronic means to the extent and in the manner authorized by the court's Standing Order, In Re: Electronic Case Filing and Procedures, as contained in Appendix H of these Local Rules. Documents filed electronically shall substantially conform to the requirement of these Local Rules.

(2) A document filed by electronic means in compliance with this Local Rule and Appendix H constitutes a written document for the purposes of applying these Local Rules, the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

(3) The "Notice of Electronic Filing" that is automatically generated by the court's Electronic Filing System constitutes service of the filed documents on filers. Parties who are not filers must be served with a copy of any pleading or other document filed electronically in accordance with the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, and these Local Rules.

#### **B. Paper.**

(1) **General.** All pleadings, motions, notices, orders, and other documents, including attachments hereto, if presented in paper, shall be presented for filing on white opaque paper of good quality, eight and one-half (8 ½) inches by eleven (11) inches in size, with writing appearing only on one side of the page.

(2) **Paper Deposition Transcripts and Attachments.** Paper deposition transcripts and attachments to pleadings or motions filed in this court are subject to the restrictions set forth in LR 5.1B(1) above. In addition, paper deposition

transcripts filed in support of pleadings or motions may not be compacted or reduced beyond one page of deposition per each page of exhibit.

**C. Type; Format.** Pleadings, motions, and other documents presented to the court for filing must:

(1) be computer processed, typed or handprinted on one side of the page only;

(2) be double-spaced between lines; and

(3) not be materially defaced by erasures or interlineations.

Computer documents must be prepared in one of the following fonts: Times New Roman (at least 14 point), Courier New (at least 12 point), Century Schoolbook (at least 13 point), or Book Antigua (at least 13 point). Typewriter prepared documents must be prepared with no more than 10 characters per inch. Footnotes, headings, and indented citations may be single-spaced.

**D. Margins.** All pleadings and other documents shall be prepared with a top margin of not less than one and one-half (1 ½) inches and a left margin of not less than one (1) inch.

**E. Numbering.** All pages shall be numbered consecutively at the bottom center of the page. Attachments to pleadings shall be numbered consecutively within the attachment.

**F. Citations.** When Acts of Congress or sections thereof are cited, counsel shall include the corresponding United States Code citation. When citing regulations, counsel shall give all Code of Federal Regulations references and the date of promulgation. All citations shall include the specific page or pages upon which the cited matters appear.

**G. Counsel Identification.** Name, complete address (including post office box or drawer number and street address), telephone number, facsimile number and Georgia Bar number of counsel shall appear on every pleading and other document presented for filing.

**H. Civil Cover Sheet.** The attorney filing the complaint shall prepare and submit to the clerk of court the civil cover sheet which is available at the public filing counter.

**I. Flat Filing.** All documents presented to the clerk or judge for filing shall be flat and unfolded and firmly bound at the top.

**J. Captions on Pleadings.** All pleadings presented to the clerk or judge for filing must bear specific pleading designations, in accordance with the nomenclature set forth in Fed.R.Civ.P. 7. When a document contains multiple pleadings, e.g., an answer to a complaint and a counterclaim or crossclaim, all pleadings contained in the document must be included in the caption on the first page of the document. Generalized captions, such as "Responsive Pleadings," will not be accepted for filing.

**K. Civil Case Numbers.** A civil case filed in this court shall be assigned a case number which will identify it as a civil case, designate the division, the year and the numerical sequence in which the case was filed, and include a three-initial suffix which will identify the district judge to whom the case is assigned. All documents presented to the clerk or judge for filing and all case-related correspondence shall have typed thereon the assigned civil case number which includes a three-initial suffix. Any document presented for filing which does not reflect the complete civil case number as described herein will not be accepted for filing.

**L. Pleadings Filed by Attorneys Appearing *Pro Hac Vice*.** Refer to LR 83.1B(2).

## **LR 5.2 ADDITIONAL AND COURTESY COPIES**

**A. (1) Generally.** An original of all complaints, answers, amendments, motions, and other pleadings and papers shall be filed with the clerk at the public filing counter, unless the court expressly authorizes filing by other means. All original and courtesy copies of pleadings shall be clearly marked. A copy of each pleading shall be served upon opposing counsel.

**(2) Courtesy Copies in Electronic Format.** Courtesy copies of pleadings may be presented to the judge or magistrate judge in electronic format on a compact disc. Such discs may include hyperlinks to case cites, statutes, affidavits, depositions, and exhibits. Any courtesy copy in electronic format shall also be served upon each of the parties in accordance with F.R.Civ.P. 5(a).

## **LR 5.3 SPECIAL REQUIREMENTS FOR I.R.S. JEOPARDY ASSESSMENTS**

All actions arising under 26 U.S.C. § 7429 shall bear the designation "Review of Jeopardy Assessments" on the complaint next to the style of the case. Upon filing such an action, the filing attorney shall immediately present a motion for rule nisi to the judge to whom the action has been assigned in order that the action might be promptly brought to the judge's attention. Failure to comply with this rule may result in dismissal of the action.

## **LR 5.4 SERVICE AND FILING OF DISCOVERY MATERIAL**

**A. Filing Not Generally Required.** Interrogatories, requests for inspection, requests for admission, and answers and responses thereto shall be served upon other counsel or parties, but they shall not be routinely filed with the court. The

party responsible for service of the discovery material shall, however, file a certificate with the clerk indicating the date of service. Counsel shall also retain the original discovery material and become its custodian.

**B. Selective Filing Required for Motions, Trial and Appeal.**

(1) The custodial party shall file with the clerk at the time of use at trial or with the filing of a motion those portions of depositions, interrogatories, requests for documents, requests for admission and answers or responses thereto which are used at trial or which are necessary to the motion.

(2) Where discovery materials not previously in the record are needed for appeal purposes, the court, upon application, may order or counsel may stipulate in writing that the necessary materials be filed with the clerk.

### **III. PLEADINGS AND MOTIONS**

#### **LR 7: PLEADINGS ALLOWED; FORM OF MOTIONS**

##### **LR 7.1 FILING OF MOTIONS AND RESPONSES; HEARINGS**

**A. Filing of Motions.**

(1) Every motion presented to the clerk for filing shall be accompanied by a memorandum of law which cites supporting authority. If allegations of fact are relied upon, supporting affidavits must be attached to the memorandum of law.

(2) Specific filing times for some motions are set forth below. All other motions must be filed WITHIN THIRTY (30) DAYS after the beginning of discovery unless the filing party has obtained prior permission of the court to file later.

**B. Response to Motion.** Any party opposing a motion shall serve the party's response, responsive memorandum, affidavits, and any other responsive material not later than fourteen (14) days after service of the motion, except that in cases of motion for summary judgment the time shall be twenty-one (21) days after the service of the motion. Failure to file a response shall indicate that there is no opposition to the motion.

**C. Reply.** A reply by the movant shall be permitted, but it is not necessary for the movant to file a reply as a routine practice. When the movant deems it necessary to file a reply brief, the reply must be served not later than fourteen (14) days after service of the responsive pleading.

**D. Page and Type Limitations.** Absent prior permission of the court, briefs filed in support of a motion or in response to a motion are limited in length to twenty-five (25) pages. If the movant files a reply, the reply brief may not exceed fifteen

(15) pages. Refer to LR 5.1 for restrictions regarding the preparation of briefs. At the end of the brief, counsel must certify that the brief has been prepared with one of the font and point selections approved by the court in LR 5.1B or, if type written, that the brief does not contain more than 10 characters per inch of type.

**E. Hearings.** Motions will be decided by the court without oral hearing, unless a hearing is ordered by the court.

**F. Effect of Noncompliance.** The court, in its discretion, may decline to consider any motion or brief that fails to conform to the requirements of these rules.

## **LR 7.2 SPECIFIC MOTIONS**

**A. Motions Pending on Removal.** When an action or proceeding is removed to this court with pending motions on which briefs have not been submitted, the moving party shall serve a memorandum in support of the motion within fourteen (14) days after removal. Each party opposing the motion shall reply in compliance with LR 7.1B.

**B. Emergency Motions.** Upon written motion and for good cause shown, the court may waive the time requirements of this rule and grant an immediate hearing on any matter requiring such expedited procedure. The motion shall set forth in detail the necessity for such expedited procedure.

**C. Motions to Compel Discovery** Refer to LR 37.1.

**D. Motions for Summary Judgment.** Refer to LR 56.1.

**E. Motions for Reconsideration.** Motions for reconsideration shall not be filed as a matter of routine practice. Whenever a party or attorney for a party believes it is absolutely necessary to file a motion to reconsider an order or judgment, the motion shall be filed with the clerk of court within twenty-eight (28) days after entry of the order or judgment. Responses shall be filed not later than fourteen (14) days after service of the motion. Parties and attorneys for the parties shall not file motions to reconsider the court's denial of a prior motion for reconsideration.

**F. Daubert Motions.** Refer to LR 26.2C.

## **LR 7.3 ORAL RULINGS ON MOTIONS**

Unless the court directs otherwise, all orders, including findings of fact and conclusions of law, orally announced by the district judge in court shall be prepared in writing by the attorney for the prevailing party. The original order shall be submitted to the district judge within seven (7) days from the date of pronouncement. Copies shall also be provided each party.

## **LR 7.4 RESTRICTIONS ON LETTER COMMUNICATIONS TO JUDGES**

Communications to judges seeking a ruling or order, including an extension of time, shall be by motion and not by letter. A letter seeking such action ordinarily will not be treated as a motion. Counsel shall not provide the court with copies of correspondence among themselves relating to matters in dispute.

## **LR 7.5 APPLICATIONS TO JUDGES IN CHAMBERS**

**A. Judge to Whom Request Submitted.** Whenever an attorney seeks an immediate order of the court, the attorney must submit a motion to the district judge to whom the case has been assigned if the district judge is present within the district. If the district judge is not available or if the case has not yet been assigned to a particular judge, the attorney shall contact the clerk for instructions as to which judge the motion should be submitted. All courtesy copies of proposed orders must be clearly marked.

**B. Proper Notice to Adversary.** Whenever an attorney desires to confer with a judge or magistrate judge of this court in chambers with regard to a pending case, the attorney shall first give proper notice to opposing counsel, disclosing the date, hour, and nature of the conference sought, and shall satisfy the district judge or magistrate judge that such notice has been given. Emergency situations in which it is impossible to contact opposing counsel and those situations (other than motions to proceed *in forma pauperis*) where ex parte motions or applications are contemplated by the Federal Rules of Civil Procedure are excepted from this rule.

## **LR 9: PLEADING SPECIAL MATTERS**

### **LR 9.1 THREE-JUDGE COURT**

When a suit or proceeding is commenced which is believed to require a three judge court for disposition, the party instituting the action shall notify the clerk that a three-judge court is requested and the provision under which the party is proceeding. When a three-judge court hearing is requested after filing of the initial complaint, counsel shall at that time notify the clerk of the provision under which the attorney is proceeding.

## **LR 10: FORM OF PLEADINGS**

### **LR 10.1 CAPTIONS ON PLEADINGS**

All pleadings presented to the clerk or judge for filing must bear specific pleading designations, in accordance with the nomenclature set forth in Fed.R.Civ.P. 7. When a document contains multiple pleadings, e.g., an answer to a complaint and a counterclaim or crossclaim, all pleadings contained in the document must be included in the caption on the first page of the document. Generalized captions, such as "Responsive Pleadings," will not be accepted for filing.

## **LR 11: SIGNING OF PLEADINGS, MOTIONS AND OTHER PAPERS; REPRESENTATIONS TO COURT; SANCTIONS**

### **LR 11.1 COUNSEL IDENTIFICATION**

Counsel's name, complete address (including post office box or drawer number and street address), telephone number, facsimile number and Georgia Bar number shall appear on every pleading and other paper presented for filing.

## **LR 15: AMENDED AND SUPPLEMENTAL PROCEEDINGS**

### **LR 15.1 AMENDED PLEADINGS**

In those instances where reproduction of the entire pleading as amended would be unduly burdensome, parties filing or moving to file an amendment to a pleading shall be permitted to incorporate relevant provisions of prior pleadings by reference.

## **LR 16: PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT**

### **LR 16.1 RULE 26(f) (EARLY PLANNING) CONFERENCE**

Prior to filing the Joint Preliminary Report and Discovery Plan, lead counsel for all parties are required to confer in person in an effort to settle the case, discuss discovery, limit issues, and discuss other matters also addressed in the Joint Preliminary Report and Discovery Plan. The conference shall be held within sixteen (16) days after the appearance of a defendant by answer or motion and shall comply with the requirements of Fed.R.Civ.P. 26(f). Counsel are required to inform the parties promptly of all offers of settlement proposed at conference.

If the filing deadline for the Certificate of Interested Persons (see LR 3.3) has not already passed, counsel may wish to include the certificate on counsel's agenda for the Rule 26(f) conference.

## **LR 16.2 JOINT PRELIMINARY REPORT AND DISCOVERY PLAN**

For all cases not settled at the Rule 26(f) conference counsel are required to complete the Joint Preliminary Report and Discovery Plan form prepared by the court and attached to these rules as Appendix B. See Fed.R.Civ.P. 26(f). If counsel cannot agree on the answers to specific items, the contentions of each party must be shown on the form. The completed form must be filed within thirty (30) days after the appearance of the first defendant by answer or motion or within thirty (30) days after a removed case is filed in this Court. This rule applies only to cases not exempted pursuant to Fed.R.Civ.P.26(a)(1)(B). *Pro se* litigants and opposing counsel shall be permitted to file separate statements.

The Joint Preliminary Report and Discovery Plan shall include as referenced on the form:

1. A classification of the type of action, a brief factual outline of the case, a succinct statement of the issues in the case, and a listing of any pending or previously adjudicated related cases.

2. An indication of whether the case is complex because of the existence of one or more of the following features:

- (1) Unusually large number of parties
- (2) Unusually large number of claims or defenses
- (3) Factual issues are exceptionally complex
- (4) Greater than normal volume of evidence
- (5) Extended discovery period is needed
- (6) Problems locating or preserving evidence
- (7) Pending parallel investigations or action by government
- (8) Multiple use of experts
- (9) Need for discovery outside United States boundaries
- (10) Existence of highly technical issues and proof

3. The individual names of lead counsel for each party.

4. Any objections, supported by authority, to this court's jurisdiction.

5. The names of necessary parties to this action who have not been joined and any questions of misjoinder of parties and inaccuracies and omissions regarding the names of parties.

6. A description of any amendments to the pleadings which are anticipated and a time-table for the filing of amendments.

7. Information regarding timing limitations for filing motions in this case.

8. Objections to initial disclosures, and space for the attorneys to indicate which party has objections, and the basis therefor.



**9.** Request for scheduling conference with the court, if any, stating the issues which could be addressed and the position of each party.

**10.** Directions regarding the length of the discovery period and subjects of discovery and space for the attorney to indicate reasons, if any, why additional discovery time is needed and the subjects of discovery.

**11.** Proposals and reasons in support thereof for modifying the limitations on discovery under the Federal Rules of Civil Procedure or the Local Rules of this Court.

**12.** Requests for additional orders from the Court.

**13.** A report regarding the settlement discussions required by LR 16.1, including the date; the name(s) of the lead counsel and other persons who attended; the likelihood of settlement of the case following the conference; dates for future settlement conferences between counsel; and specific problems hindering settlement of the case.

**14.** A statement as to whether the parties are willing to consent to trial before a magistrate judge. Consenting parties must complete and file with the clerk the Consent to Jurisdiction by a United States Magistrate Judge form provided to all parties in the pretrial instruction packet.

**15.** The signatures of lead counsel for each party consenting to the submission of the Joint Preliminary Report and Discovery Plan form.

**16.** A scheduling order to be signed by the district judge imposing time limits for adding parties, amending the pleadings, filing motions, completing discovery, and, if appropriate, addressing settlement initiatives and referral of the case to trial before a magistrate judge, in accordance with the form submitted by counsel, except as the district judge may specifically state otherwise.

### **LR 16. 3 CONFERENCE AFTER DISCOVERY**

For cases not settled earlier, counsel for plaintiff shall contact counsel for all other parties to arrange an in person conference among lead counsel and a person possessing settlement authority for each plaintiff and each defendant to discuss, in good faith, settlement of the case. The conference must be held no later than fourteen (14) days after the close of discovery. If this personal conference does not produce a settlement, the status of settlement negotiations must be reported in item twenty-six (26) of the pretrial order, LR 16.4. *Pro se* litigants and their opposing counsel and cases involving administrative appeals are exempt from the requirements of this rule.

### **LR 16.4 CONSOLIDATED PRETRIAL ORDER**

**A. Procedure.** The parties shall prepare and sign, in lieu of the Fed.R.Civ.P. 26(a)(3) disclosures, a proposed consolidated pretrial order to be filed with the clerk no later than thirty (30) days after the close of discovery, or entry of the court's ruling on any pending motions for summary judgment, whichever is later. It shall be the responsibility of plaintiff's counsel to contact defense counsel to arrange a date for the conference. If there are issues on which counsel for the parties cannot agree, the areas of disagreement must be shown in the proposed pretrial order. In those cases in which there is a pending motion for summary judgment, the court may in its discretion and upon request extend the time for filing the proposed pretrial order.

If counsel desire a pretrial conference, a request must be indicated on the proposed pretrial order immediately below the civil action number. Counsel will be notified if the district judge determines that a pretrial conference is necessary. A case shall be presumed ready for trial on the first calendar after the pretrial order is filed unless another time is specifically set by the court.

**B. Content.** Each proposed consolidated pretrial order shall contain the information outlined below. No modifications or deletions shall be made without the prior permission of the court. A form Pretrial Order prepared by the court and which counsel shall be required to use is contained in Appendix B. Copies of the form Pretrial Order containing adequate space for response are available at the public filing counter in each division.

The proposed order shall contain:

1. A statement of any pending motions or other matters.
2. A statement that, unless otherwise noted, discovery has been completed. Counsel will not be permitted to file any further motions to compel discovery. Provided there is no resulting delay in readiness for trial, depositions for the preservation of evidence and for use at trial will be permitted.
3. A statement as to the correctness of the names of the parties and their capacity and as to any issue of misjoinder or non-joinder of parties.
4. A statement as to any question of the court's jurisdiction and the statutory basis of jurisdiction for each claim.
5. The individual names of lead counsel for each party.
6. A statement as to any reason why plaintiff should not be entitled to open and close arguments to the jury.
7. A statement as to whether the case is to be tried to a jury, to the court without a jury, or that the right to trial by jury is disputed.
8. An expression of the parties' preference, supported by reasons, for a unified or bifurcated trial.
9. A joint listing of the questions which the parties wish the court to propound to the jurors concerning their legal qualifications to serve.

**10.** A listing by each party of requested general voir dire questions to the jurors. The court will question prospective jurors as to their address and occupation and as to the occupation of a spouse, if any. Follow-up questions by counsel may be permitted. The determination of whether the district judge or counsel will propound general voir dire questions is a matter of courtroom policy which shall be established by each judge.

**11.** A statement of each party's objections, if any, to another party's general voir dire questions.

**12.** A statement of the reasons supporting a party's request, if any, for peremptory challenges in addition to those allowed by 28 U.S.C. § 1870.

**13.** A brief description, including style and civil action number, of any pending related litigation.

**14.** An outline of plaintiff's case which shall include:

(a) A succinct factual statement of plaintiff's cause of action which shall be neither argumentative nor recite evidence.

(b) A separate listing of all rules, regulations, statutes, ordinances, and illustrative case law creating a specific legal duty relied upon by plaintiff.

(c) A separate listing of each and every act of negligence relied upon in negligence cases.

(d) A separate statement for each item of damage claimed containing a brief description of the item of damage, dollar amount claimed, and citation to the law, rule, regulation, or any decision authorizing a recovery for that particular item of damage. Items of damage not identified in this manner shall not be recoverable.

**15.** An outline of defendant's case which shall include:

(a) A succinct factual summary of defendant's general, special, and affirmative defenses which shall be neither argumentative nor recite evidence.

(b) A separate listing of all rules, regulations, statutes, ordinances, and illustrative case law creating a defense relied upon by defendant.

(c) A separate statement for each item of damage claimed in a counterclaim which shall contain a brief description of the item of damage, the dollar amount claimed, and citation to the law, rule, regulation, or any decision which authorizes a recovery for that particular item of damage. Items of damage not identified in this manner shall not be recoverable.

**16.** A listing of stipulated facts which may be read into evidence at trial. It is the duty of counsel to cooperate fully with each other to identify all undisputed facts. A refusal to do so may result in the imposition of sanctions upon the non-cooperating counsel.

**17.** A statement of the legal issues to be tried.

**18.**

(a) A separate listing, by each party, of all witnesses (and their addresses) whom that party will or may have present at trial, including expert (any witness who might express an opinion under Federal Rule of Evidence 702), impeachment and rebuttal witnesses whose use can or should have been reasonably anticipated. Each party shall also attach to the party's list a reasonably specific summary of the expected testimony of each expert witness.

(b) A representation that a witness will be called may be relied upon by other parties unless notice is given fourteen (14) days prior to trial to permit other parties to subpoena the witness or obtain the witness' testimony by other means.

(c) Witnesses not included on the witness list will not be permitted to testify, unless expressly authorized by court order based upon a showing that the failure to comply was justified. The attorneys may not reserve the right to add witnesses.

**19.**

(a) A separate, typed, serially numbered listing, beginning with one (1) and without the inclusion of any alphabetical or numerical subparts, of each party's documentary and physical evidence. Adequate space must be left on the left margin of each list for court stamping purposes. A courtesy copy of each party's list must be submitted for use by the district judge. Learned treatises which counsel expect to use at trial shall not be admitted as exhibits, but must be separately listed on the party's exhibit list.

(b) Prior to trial counsel shall affix stickers numbered to correspond with the party's exhibit list to each exhibit. Plaintiffs shall use yellow stickers; defendants shall use blue stickers; and white stickers shall be used on joint exhibits. The surname of a party must be shown on the numbered sticker when there are either multiple plaintiffs or multiple defendants.

(c) A separate, typed listing of each party's objections to the exhibits of another party. The objections shall be attached to the exhibit list of the party against whom the objections are raised. Objections as to authenticity, privilege, competency, and, to the extent possible, relevancy of the exhibits shall be included. Any listed document to which an objection is not raised shall be deemed to have been stipulated as to authenticity by the parties, and such documents will be admitted at trial without further proof of authenticity.

(d) A statement of any objections to the use at trial of copies of documentary evidence.

(e) Documentary and physical exhibits may not be submitted by counsel after filing of the pretrial order, except upon consent of all the parties or permission of the court. Exhibits so admitted must be numbered, inspected by counsel, and marked with stickers prior to trial.

(f) Counsel shall familiarize themselves with all exhibits (and the numbering thereof) prior to trial. Counsel will not be afforded time during trial to examine exhibits that are or should have been listed herein.

**20.** A listing of all persons whose testimony at trial will be given by deposition and designation of the portions of each person's deposition which will be introduced. Objections not filed by the date on which the case is first scheduled for trial shall be deemed waived or abandoned. Extraneous and unnecessary matters, including nonessential colloquy of counsel, shall not be permitted to be read into evidence. No depositions shall be permitted to go out with the jury.

**21.** Any trial briefs which counsel may wish to file containing citations to legal authority on evidentiary questions and other legal issues. Limitations, if any, regarding the format and length of trial briefs is a matter of individual practice which shall be established by each judge.

**22.** Counsel are directed to prepare, in accordance with LR 51.1A, a list of all requests to charge in jury trials. These charges shall be filed no later than 9:30 a.m. on the date the case is calendared (or specially set) for trial. A short, one (1)-page or less, statement of the party's contentions must be attached to the requests. Requests should be drawn from the latest edition of the Eleventh Circuit District Judges Association's Pattern Jury Instructions and Devitt and Blackmar's Federal Jury Practice and Instructions whenever possible. In other instances, only the applicable legal principle from a cited authority should be requested.

**23.** A proposed verdict form, if counsel desire that the case be submitted to the jury in a manner other than upon general verdict.

**24.** A statement of any requests for time for argument in excess of thirty (30) minutes per side as a group and the reasons for the request.

**25.** Counsel are directed to submit a statement of proposed Findings of Fact and Conclusions of Law in nonjury cases, which must be submitted no later than the opening of trial.

**26.** A statement of the date on which lead counsel and persons possessing settlement authority to bind the parties met personally to discuss settlement, whether the court has discussed settlement with counsel, and the likelihood of settlement of the case at this time.

**27.** A statement of any requests for a special setting of the case.

**28.** A statement of each party's estimate of the time required to present that party's evidence and an estimate of the total trial time.

**29.** The following paragraph shall be included at the close of each proposed pretrial order above the signature line for the district judge:

IT IS HEREBY ORDERED that the above constitutes the pretrial order for the above captioned case (\_\_\_) submitted by stipulation of the parties or (\_\_\_) approved by the court after conference with the parties.

IT IS FURTHER ORDERED that the foregoing, including the attachments thereto, constitutes the pretrial order in the above case and that it supersedes the pleadings which are hereby amended to conform hereto and that this pretrial order shall not be amended except by Order of the court to prevent manifest injustice. Any attempt to reserve a right to amend or add to any part of the pretrial order after the pretrial order has been filed shall be invalid and of no effect and shall not be binding upon any party or the court, unless specifically authorized in writing by the court.

IT IS SO ORDERED this \_\_\_ day of \_\_\_\_\_, 20\_\_\_.

**30.** The signature of lead counsel for each party on the last page below the district judge's signature.

## **LR 16.5 SANCTIONS**

Failure to comply with the court's pretrial instructions may result in the imposition of sanctions, including dismissal of the case or entry of a default judgment.

## **LR 16.6 PRETRIAL OBJECTIONS TO TRIAL EXHIBITS, DOCUMENTARY EVIDENCE AND TESTIMONY**

**A. Exhibits.** The pretrial order requires a separate, typed listing of each party's objections to the exhibits of another party. The objections shall be attached to the exhibit list of the party against whom the objections are raised. Objections as to authenticity, privilege, competency, and, to the extent possible, relevancy of the exhibits shall be included. Any listed document to which an objection is not raised shall be deemed to have been stipulated as to authenticity by the parties, and such documents will be admitted at trial without further proof of authenticity. The pretrial order also requires each party to state any objections the party may have to the use at trial of copies of documentary evidence.

**B. Testimony.** Each party is required to list all persons whose testimony at trial will be given by deposition and to designate the portions of each person's deposition which will be introduced. Objections that have not been filed by the date on which the case is first scheduled for trial shall be deemed waived or abandoned. Extraneous and unnecessary matters, including non-essential colloquy

of counsel, shall not be permitted to be read into evidence. No depositions shall be permitted to go out with the jury.

## **LR 16.7 ALTERNATIVE DISPUTE RESOLUTION PLAN**

**A. Purpose.** The court adopts this Alternative Dispute Resolution ("ADR") Program to provide alternative processes for the resolution of civil disputes with resultant savings in time and costs to litigants and to the court, but without sacrificing the quality of justice or the right of the litigants to a full trial in the event of an impasse following ADR. The program and the procedures established there under are intended to comply fully with the Alternative Dispute Resolution Act of 1998. 28 U.S.C. § 651 et.seq.

**B. Description of ADR Program.** At various stages in the litigation of a civil case, litigants and their counsel are required to consider whether utilization of an alternative dispute resolution process is desirable or appropriate in their particular case. See LR 16.7D, below. A judge may authorize use of an ADR process that is facilitated by individuals or programs not connected with the court or, alternatively, the judge may authorize utilization of an ADR process offered through the court's court-annexed ADR program.

**(1) General Referrals.** A judge may in his or her discretion refer any civil case to a non-binding ADR process, e.g. early neutral evaluation, mediation, or non-binding arbitration. Upon the consent of the parties, the judge may refer any civil case to binding arbitration, binding summary jury trial or bench trial, or other binding ADR process.

The timing of the referral to a binding or non-binding ADR process under this section is within the discretion of the referring judge.

**(2) Court-annexed ADR Program.** Note: This program has not been funded by Congress and will not be implemented until funded.

**(3) Compromise Negotiations.** Every ADR process conducted in a civil case filed in this court will be treated as a compromise negotiation for purposes of the Federal Rules of Evidence and the Georgia Rules of Evidence. No record will be made of the ADR proceedings. The ADR neutral in the particular case is disqualified from appearing as a witness, consultant, attorney, or expert in any pending or future action relating to that dispute.

**(4) Stay of Proceedings.** In the initial Order directing the litigants to an ADR process or to the court-annexed ADR program, the judge will have indicated whether the proceedings will or will not be stayed during the ADR process.

### **C. Definitions.**

As used in this local rule:

(1) **Mediation** is a non-binding supervised process presided over by a qualified and neutral mediator.

(2) **Early neutral evaluation (“ENE”)** is a non-binding supervised process where a neutral evaluator provides the litigants with an evaluation of the strengths and weaknesses of each party’s case to the extent possible at an early stage, helps the parties focus on the issues, organizes an efficient discovery plan, identifies a plan for expeditious resolution of the case by dispositive motion or trial, and/or, if possible, settles all or part of the issues in the case.

(3) **Arbitration** is the submission of a dispute to a neutral third party or panel, which then renders a decision. Arbitration is an adjudicative process that requires each side to offer evidence and present argument, upon which the neutral or panel then decides the case.

#### **D. Requirement to Consider ADR.**

(1) Counsel for the litigants are required to discuss utilization of an ADR process at the Early Planning Conference (see LR 16.1). If counsel wish to participate in ADR, counsel shall immediately so notify the judge to whom the case is assigned in writing, specifying which ADR process is desired and whether they desire to participate in the court-annexed ADR plan or otherwise. If counsel decide against participation in an ADR process at this time, this decision must be reported in the Preliminary Planning Report (see LR 16.2).

(2) For cases not resolved sooner, counsel shall again consider participation in ADR at the required Conference After Discovery (see LR 16.3). The assigned judge must be notified immediately if counsel wish to participate in an ADR process.

(3) In any case in which all counsel do not support participation in ADR, individual counsel may provide the judge confidential notice, in writing, of that counsel’s desire for ADR. The judge will then make a determination as to whether the case should be included in the ADR program.

**E. Notification of Referral.** The judge will notify the parties in writing when the judge has referred a case to an ADR process, specifying whether the referral is to the court-annexed program or otherwise.

#### **F. Selection of ADR Neutral.**

(1) **General Referrals.** For ADR processes conducted by others, the judge will appoint the ADR neutral. However, before making the appointment, the judge may direct that each party send the judge a list of the names of three (3) ADR neutrals after which the judge will then select the ADR neutral. If the parties have mutually agreed on one of the ADR neutrals listed in their submissions, the parties may so notify the judge, who in his or her discretion, may consider their recommendations. The judge will provide the parties written notice of the identity



of the ADR neutral selected and will send a copy of the appointment to the ADR neutral.

**(2) Referrals to Court-Annexed Program.** In cases referred to the court annexed program, the ADR administrator shall appoint the neutral after providing counsel with the names of three (3) or more proposed neutrals and considering any objections counsel may have to the proposed neutrals.

**(3) Judicial Contact.** Once a neutral has been appointed, counsel are not allowed to have any oral or written communication regarding the ADR process with the judge to whom the case is assigned.

**(4) ADR Conferences.** Once appointed, the ADR neutral will arrange for a conference at a time within thirty (30) days from the date of the notice naming the ADR neutral, unless otherwise ordered by the judge.

**G. Disqualification of ADR Neutrals.** Any person selected as an ADR neutral may be disqualified for bias or prejudice as provided in 28 U.S.C. § 144 and shall be disqualified in any case in which such action would be required by a justice, judge, or magistrate judge governed by 28 U.S.C. § 455.

**H. Required Submissions Before ADR Conferences.**

At least seven (7) days before the ADR conference, the parties must submit to the ADR neutral:

(a) copies of relevant pleadings and motions;

(b) a short memorandum which identifies the persons, in addition to counsel, who will attend the ADR conference and identifies the individuals connected to the opposing litigant whose presence would be helpful to a productive session. The ADR neutral shall determine whether any person so identified should be requested to attend;

(c) a written statement, not to exceed ten (10) pages double spaced, which summarizes the legal and factual position of each party respecting the issues in dispute. For ENE conferences, each party also shall prepare a written evaluation statement; any written evaluation statements for an ENE conference shall not be submitted to the judge;

(d) such other relevant materials as the ADR neutral requests.

At the conference, counsel shall be prepared to respond fully and candidly in a private caucus to questions by the ADR neutral regarding the estimated costs to counsel's clients of any remaining discovery and of litigating the case through trial, including attorneys' fees and expert witnesses, and regarding the claimed damages, including the method of computation.

**I. Procedure Applicable to all ADR Conferences.**

**(1) Attendance.** The attorney primarily responsible for each litigant's case must personally attend the ADR conference and must be prepared and authorized

to discuss all relevant issues, including settlement unless excused by the neutral. The litigants must also be present unless excused by court order. When a litigant is other than an individual, an authorized representative of such litigant, with full authority to settle, must attend. When a litigant has insurance coverage for the claims in dispute, an authorized representative of the insurance company, with full authority to settle, must attend. Willful failure of a party to attend an ADR conference will be reported to the administrator by the ADR neutral, who will then report the absence to a judicial officer for possible imposition of sanctions.

ADR conferences will be private. Persons other than the litigants and their representatives may attend only with the permission of all litigants and with the consent of the ADR neutral.

**(2) Time and Place.** The ADR neutral will fix the date and length of each ADR conference. The conference will be held at a location agreeable to the ADR neutral and the litigants or as otherwise directed by the judge.

**(3) Informal Procedure.** The ADR conference, and such additional conferences as the ADR neutral deems appropriate, will be informal.

**(4) Private Caucuses; Confidentiality.** The ADR neutral may hold separate, private caucuses with any litigant or counsel. The ADR neutral must not disclose to any other party any information disclosed by a litigant during a caucus which that party indicates to the ADR neutral should be treated as confidential. It will be the responsibility of each party to clearly indicate to the ADR neutral which information is and is not deemed confidential by that litigant.

**(5) Statements; Confidentiality.** The ADR neutral shall have the litigants and their attorneys sign a form agreeing that any statements made or presented during the ADR conference are confidential and may not be used as evidence in any subsequent administrative or judicial proceeding. The only exception shall be if the judge requests a report from the EN evaluator in the judge's order appointing the EN evaluator.

## **J. Procedure at Mediation Conference.**

**(1) Procedure.** The mediator will conduct the process in order to assist the litigants in arriving at a settlement of all or some of the issues involved in the case. The mediator will determine how to structure the mediation conference.

**(2) Settlement Proposal by Mediator.** If after reasonable efforts the litigants fail to develop settlement terms or upon request of the litigants, the mediator may submit to the litigants a final settlement proposal that the mediator believes to be fair. The litigants carefully will consider such proposal and, at the request of the mediator, will discuss the proposal with the mediator. The mediator may comment on questions of law at any appropriate time.

**(3) Conclusion of the Mediation Process.** The mediator will conclude the process when:

- (a) a settlement is reached by the litigants; or
- (b) the mediator concludes, and informs the litigants, that further efforts would not be useful.

#### **K. Procedure at ENE Conference.**

(1) **Procedure.** The evaluator will conduct the process in order to help the parties focus the issues and work efficiently and expeditiously to make the case ready for trial or settlement. The evaluator will determine how to structure the evaluation conference.

(2) **Scope.** At the initial conference, and at any additional conferences the evaluator deems appropriate, the evaluator may:

- (a) permit each litigant to make a brief oral presentation of its position through counsel or otherwise;
- (b) help the litigants to identify areas of agreement and, if feasible, enter stipulations;
- (c) determine whether the litigants wish to negotiate, with or without the evaluator's assistance, before evaluation of the case;
- (d) help the litigants identify issues and assess the relative strengths and weaknesses of the litigants' positions;
- (e) help the litigants to agree on a plan for exchanging information and conducting discovery which will enable them to prepare expeditiously for the resolution of the case by trial, settlement, or dispositive motion;
- (f) help the litigants to assess litigation costs realistically;
- (g) determine whether one or more additional conferences would assist in the settlement or case development process and, if so, schedule the conference and direct the litigants to prepare and submit any additional written materials needed for the conference;
- (h) at the final conference (which may be the initial conference), give an evaluation of the strengths and weaknesses of each litigant's case and of the probable outcome if the case is tried, including, if feasible, the dollar value of each claim and counterclaim;
- (i) advise the litigants, if appropriate, about the availability of ADR processes that might assist in resolving the dispute;
- (j) act as a mediator or otherwise assist in settlement negotiations either before or after presenting the evaluation called for in Section (2)(h) above; and
- (k) assist the litigants in narrowing the issues in the case, and, if requested by the judge, the evaluator may send a report to the judge on whether a preliminary pretrial conference should be held with the judge under Rule 16 to further narrow the issues in the case.

#### **L. Report to the Court.**

Within seven (7) days following any ADR process, the ADR neutral will file a Report indicating the date and length of the ADR process and whether all required litigants were present. If a settlement agreement is reached, the Report will indicate that a settlement is reached and the date by which the final settlement agreement will be executed and the dismissal filed. If no settlement agreement is reached, the ADR neutral will report in writing that the ADR process was held, that no agreements were reached, and the recommendations, if any, of the ADR neutral as to the future processing of the case. The written Report shall be prepared by the ADR neutral (or at the ADR neutral's request, one of the litigants), shall be signed by the litigants, and shall be delivered to the ADR administrator.

If a settlement is reached, the ADR neutral, or one of the litigants at the ADR neutral's request, shall prepare a written document reflecting briefly the terms of the settlement agreement which shall be signed by the litigants and retained by the ADR neutral and the litigants.

#### **M. Fee.**

(1) **General.** Litigants are encouraged to agree upon compensation of the ADR neutral at or before the first conference. Relevant factors to be considered in determining an appropriate fee include the complexity of the litigation, the degree of skill necessary to facilitate the dispute, and the ability of the litigants to pay.

(2) **Court Annexed Program.** Neutrals in the court-annexed ADR program are required to list their fee schedules as part of their applications. The court will review fee schedules for reasonableness. Daily rather than hourly rates are encouraged. Any issues with regard to fees will be resolved by the ADR administrator.

(3) Before being placed on the roster for the court's annexed ADR program, a neutral must agree to provide pro bono hours and hours at reduced rates to defray ADR costs for parties with limited ability to pay. The number of hours required will be determined by the judges.

## **IV. PARTIES**

### **LR 23: CLASS ACTIONS**

#### **LR 23.1 CLASS ACTIONS**

##### **A. Complaint, Counterclaims, Crossclaims**

(1) **Caption.** For all class actions the complaint shall bear next to the style of the case the designation "Complaint - Class Action."

**(2) Class Action Allegations.** Under a separate heading titled "Class Action Allegations", the complaint shall provide the following information:

(a) The section of Fed.R.Civ.P. 23 which is claimed to authorize maintenance of suit by class action.

(b) The size (or approximate size) and definition of the alleged class.

(c) The basis of the named plaintiff's or plaintiffs' claim to be an adequate representative of the class or, if defendants, the basis of the named defendant's or defendants' claim to be an adequate representative of the class.

(d) The alleged questions of law and fact which are common among members of the class.

(e) The allegations necessary to satisfy the criteria of section (b)(1) or (b)(2) of Fed.R.Civ.P. 23 or to support the findings required by section (b)(3) of Fed.R.Civ.P. 23.

(f) For actions requiring a jurisdictional amount, the basis for determination of that amount.

The foregoing provisions shall apply, with appropriate adaptations, to any counterclaim or crossclaim alleged to be brought for or against a class.

**B. Class Certification.** The plaintiff shall move within ninety (90) days after the complaint is filed for a determination under Fed.R.Civ.P. 23(c)(1) as to whether the suit may be maintained as a class action. Notwithstanding the foregoing, in any class action brought pursuant to the Private Securities Litigation Reform Act of 1995, or a class action in which one or more defendants have filed a motion to dismiss pursuant to Fed.R.Civ.P. 12 in lieu of an answer to the complaint, or a class action in which one or more parties file a motion for coordination and/or consolidation of multiple actions before the Judicial Panel on Multidistrict Litigation, the plaintiff shall move for a determination under Fed.R.Civ.P. 23(c)(1) within thirty (30) days after all defendants have filed an answer to the complaint. The court may extend the time upon a showing of good cause.

**C. Communications with Actual or Putative Class Members.**

**(1) Purpose.** The administration of justice often requires that limited restrictions be placed on counsel and parties in cases in which class certification is sought or has been granted. In class actions where a putative class member is permitted to elect not to participate in the class action, there is an inherent risk that a class member's decision may, in the absence of court regulation of communications regarding the class action, not be based on a complete and balanced presentation of the relevant facts. Special management of class actions is often necessary to protect the interests of both formal parties and absent class members.

**(2) Restrictions on Communications.** When class certification is sought in a case, all parties and/or their counsel are required to confer jointly to determine whether proper management of the case or the interests of putative class members require the entry of an order limiting either the parties or counsel in communications with putative class members. The conference shall occur as soon as practicable, but in no event later than twenty-one (21) days after the complaint is served. Within fourteen (14) days after the conference, counsel shall submit to the court a joint statement of their collective or individual views as to whether an order should be entered limiting communications. If counsel agree no order is necessary, they shall so state in their report to the court. If counsel agree that an order limiting communications should be entered, they shall submit the proposed content of such order and the grounds justifying entry of same. If counsel cannot agree whether an order should be entered or what the content of such an order should be, they shall report this to the court and either submit stipulated facts for the court's consideration or request a hearing to present evidence on the issue. Based on the record before the court, an order limiting communications may be entered upon a finding that a failure to so limit communications would likely result in imminent and irreparable injury to one of the parties. Except as set forth in LR 23.1(c)(4)(a), neither the parties nor their counsel shall initiate communications with putative class members regarding the substance of the lawsuit until counsel presents the required report to the court and any necessary order is entered pursuant to the report.

**(3) Restrictions Applicable to All Class Actions.** In all cases where class certification is sought or granted, the following shall apply:

**(a)** All parties and counsel are forbidden to solicit fees and expenses or agreements to pay fees and expenses from prospective or actual class members who are not formal parties or who do not plan to become formal parties.

**(b)** All parties and counsel are forbidden to communicate with prospective or actual class members in a way which tends to misrepresent the status, purpose, and effects of the action or of any actual or potential court orders therein, which may create impressions tending without cause to reflect adversely on any party, any counsel, the court, or the administration of justice.

**(4) Class Actions Under the Private Securities Litigation Reform Act of 1995.** The Private Securities Litigation Reform Act of 1995 (“Reform Act”) provides for a notice to be published following the commencement of a securities class action. 15 U.S.C. §§ 78u-4(a)(3)(A)(i), 77z-1(a)(3)(A)(i). The court finds that certain practices in Reform Act class actions have the potential to harm the interests of class members and/or defendants and can interfere with the orderly

administration of justice. For example, the court finds that numerous notices of the same litigation have been released, thereby creating the potential for confusion for potential class members and potential damage to the interests of shareholders and businesses. The court finds further that the measures adopted herein are reasonably necessary to protect the interests of class members, realize the goals of the Reform Act, and balance the rights of those who wish to prosecute a Reform Act class action or communicate about it.

**(a) Notice of the Reform Act Class Action.**

**(i) Contents of the Notice.** Consistent with the provisions of 15 U.S.C. §§ 78u- 4(a)(3)(A)(i) , 77z-1(a)(3)(A)(i), following the filing of any Reform Act class action in this District, each law firm on a complaint may choose to publish a notice. Such notice shall have as its headline “Notice of Filing Securities Class Action Against [Defendant or Defendants]” and shall provide the following information as required by the Reform Act:

- 1) the pendency of the action;
- 2) the claims asserted therein;
- 3) the purported class period;
- 4) that, not later than sixty (60) days after the date on which the first notice is published, any member of the purported class may move the court to serve as lead plaintiff of the purported class; and
- 5) contact information for the law firm issuing the notice, including the name of a contact person who is designated to discuss the lawsuit with putative class members, an address, a telephone number, and a website and e-mail address, if applicable. However, the notice shall not contain a promotional statement for any law firm.

**(ii) Type of Publication.** The one notice pursuant to subsection (i) shall be published in a widely circulated national business-oriented publication or wire service.

**(iii) Only One Notice Per Law Firm.** Unless otherwise ordered by the court, there shall be only one notice per law firm regardless of the number of complaints filed in this Court arising out of the same or similar set of facts or circumstances. No attorney seeking to represent the putative class shall initiate any other communication with putative class members unless approved in advance by the court. Such court approval will be granted if the communication is deemed by this Court to be reasonably necessary to achieve the purposes of the Reform Act. This rule does not affect the

rights or obligations of defendants to give notice of the pendency of the suit, nor does it preclude counsel for either party from contacting class members whom they believe to be fact witnesses or with whom they have an attorney-client relationship.

**(b) Motion for Appointment of Lead Plaintiff.** Pursuant to 15 U.S.C. §§ 78u- 4(a)(3)(B)(i) and (v) , 77z-1(a)(3)(B)(i) and (v), the court shall consider any motion for appointment of lead plaintiff and lead plaintiff's counsel in a Reform Act class action within ninety (90) days after the date on which the first Notice is published pursuant to 15 U.S.C. §§ 78u-4(a)(3)(A)(i), 77z-1(a)(3)(A)(i), and this rule or as soon thereafter as practicable. Consistent with the purpose and terms of the Reform Act, in considering and ruling upon such a motion as to appointment of lead plaintiff and lead counsel, the court will consider, among other relevant factors, the following:

(i) the proposed lead plaintiff's financial loss, recognizing that the presumption that the person with the largest financial interest in the relief sought is the most adequate lead plaintiff is rebuttable;

(ii) whether the proposed lead plaintiff's counsel has complied with the Local Rules of this Court;

(iii) whether the proposed lead plaintiff's counsel promotes the efficient conduct of the litigation; and

(iv) the relevant experience of the proposed lead plaintiff's counsel.

**(c) Certification of Proposed Lead Counsel.** Any law firm seeking to be appointed lead counsel pursuant to the Reform Act, 15 U.S.C. §§ 78u-4(a)(3)(B)(v) , 77z- 1(a)(3)(B)(v), shall submit with its motion papers a sworn certification stating that with regard to the case at bar, such law firm:

(i) has issued or caused to be issued no more than one notice to putative class members (except as authorized by LR 23.1(C)(4)(a)(iii));

(ii) has complied with the Local Rules of this Court; and

(iii) has complied with applicable State Bar of Georgia ethical rules.

**(5) Ethical and Other Obligations Not Affected.** The obligations and prohibitions of the foregoing rule are not exclusive. All other ethical, legal, and equitable obligations to which counsel and/or parties are subject are not affected by this rule.

## **V. DEPOSITIONS AND DISCOVERY**



## **LR 26: GENERAL PROVISIONS GOVERNING DISCOVERY; DUTY OF DISCLOSURE**

### **LR 26.1 INITIAL AND EXPERT DISCLOSURES**

**A. Applicability.** The parties to civil actions shall make the initial disclosures required by Fed.R.Civ.P. 26(a)(1) at or within thirty (30) days after the appearance of a defendant by answer or motion. Expert disclosures shall be made as required by Fed.R.Civ.P.26(a)(2) and by LR 26.2(C). Pretrial disclosures (Fed.R.Civ.P. 26(a)(3)) are addressed in LR 16.4, Consolidated Pretrial Order.

#### **B. Procedures.**

**(1) Standard Form.** The court has prepared a form, Initial Disclosures, which counsel shall be required to use. A copy of the form is included as Form I in Appendix B and copies of the form may be obtained by counsel at the public filing counter in each division. No modifications or deletions to the form shall be made without prior permission of the court. All disclosures must be answered fully in writing in compliance with Fed.R.Civ.P. 26. See also Fed.R.Civ.P. 37 regarding failure to make disclosures.

**(2) Multiple Parties.** If there is more than one (1) plaintiff or more than one (1) defendant in the action, each plaintiff and each defendant must submit the disclosures separately unless a disclosure is the same for all plaintiffs or all defendants.

**(3) Attorney's Signature Required.** Initial Disclosures shall be certified as directed by Fed.R.Civ.P. 26(g)(1). Sanctions, if appropriate, will be imposed according to Fed.R.Civ.P. 26(g)(3) and 37(c).

**(4) Removed Cases.** For purposes of this rule, any time period stated to run from the appearance of a defendant will run from the date the removed case is filed in this court.

**C. Supplementation and Amendment of Disclosures.** The duties of a party to supplement and amend prior initial, expert or pretrial disclosure are set forth in Fed.R.Civ.P. 26(e).

### **LR 26.2 DISCOVERY PERIOD.**

#### **A. Commencement; Length.**

The discovery period shall commence thirty (30) days after the appearance of the first defendant by answer to the complaint, unless the parties mutually consent to begin earlier. Discovery proceedings must be initiated promptly so that discovery is initiated and completed (including the filing of answers and responses

thereto) within the time limitations of the discovery track to which the case is assigned.

The discovery tracks established in this court are: (1) zero (0)-months discovery period; (2) four (4)-months discovery period; and (3) eight (8)-months discovery period. A chart showing the assignment of cases to a discovery track by filing category is contained in Appendix F.

#### **B. Adjustments to Discovery Period.**

The court may, in its discretion, shorten or lengthen the time for discovery. Motions requesting extensions of time for discovery must be made prior to expiration of the existing discovery period and will be granted only in exceptional cases where the circumstances on which the request is based did not exist or the attorney or attorneys could not have anticipated that such circumstances would arise at the time the Joint Preliminary Report and Discovery Plan was filed.

#### **C. Expert Witnesses.**

Any party who desires to use the testimony of an expert witness shall designate the expert sufficiently early in the discovery period to permit the opposing party the opportunity to depose the expert and, if desired, to name its own expert witness sufficiently in advance of the close of discovery so that a similar discovery deposition of the second expert might also be conducted prior to the close of discovery.

Any party who does not comply with the provisions of the foregoing paragraph shall not be permitted to offer the testimony of the party's expert, unless expressly authorized by court order based upon a showing that the failure to comply was justified.

Any party objecting to an expert's testimony based upon *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 113 S.Ct. 2786 (1993) shall file a motion no later than the date that the proposed pretrial order is submitted. Otherwise, such objections will be waived, unless expressly authorized by court order based upon a showing that the failure to comply was justified.

### **LR 26.3 SERVICE AND FILING OF DISCOVERY MATERIAL**

**A. Filing Not Generally Required.** Interrogatories, requests for inspection, requests for admission, and answers and responses thereto shall be served upon other counsel or parties, but they shall not be routinely filed with the court. The party responsible for service of the discovery material shall, however, file a certificate with the clerk indicating the date of service. Counsel shall also retain the original discovery material and become its custodian.

**B. Selective Filing Required for Motions, Trial and Appeal.**

(1) The custodial party shall file with the clerk at the time of use at trial or with the filing of a motion those portions of depositions, interrogatories, requests for documents, requests for admission and answers or responses thereto which are used at trial or which are necessary to the motion.

(2) Where discovery materials not previously in the record are needed for appeal purposes, the court, upon application, may order or counsel may stipulate in writing that the necessary materials be filed with the clerk.

## **LR 30: DEPOSITIONS UPON ORAL EXAMINATION**

### **LR 30.1 EXPERT WITNESSES**

Limitations regarding the timing of expert depositions and listing of potential and expected expert witnesses at trial (see Fed.R.Civ.P. 26(a)(2)), are set forth in LR 26.2C and LR 16.4B(18), respectively.

## **LR 37: FAILURE TO MAKE DISCLOSURES OR TO COOPERATE IN DISCOVERY; SANCTIONS**

### **LR 37.1 MOTIONS TO COMPEL A DISCLOSURE OR DISCOVERY**

**A. Form.** A motion to compel a disclosure under LR 26.1 or to compel a response to discovery conducted pursuant to the Federal Rules of Civil Procedure shall:

(1) Include the certification of counsel with regard to the duty to confer required by Fed.R.Civ.P. 37(a)(2)(A)(B);

(2) Quote verbatim each disclosure, interrogatory, deposition question, request for designation of deponent, or request for inspection to which objection is taken;

(3) State the specific objection;

(4) State the grounds assigned for the objection (if not apparent from the objection); and

(5) Cite authority and include a discussion of the reasons assigned as supporting the motion.

The motion shall be arranged so that the objection, grounds, authority, and supporting reasons follow the verbatim statement of each specific disclosure, interrogatory, deposition question, request for designation of deponent, or request for inspection to which an objection is raised.

**B. Time for Filing.** Unless otherwise ordered by the court, a motion to compel a disclosure or discovery must be filed within the time remaining prior to the close of discovery or, if longer, within fourteen (14) days after service of the disclosure

or discovery response upon which the objection is based. The close of discovery is established by the expiration of the original or extended discovery period or by written notice of all counsel, filed with the court, indicating that discovery was completed earlier.

**C. Procedures.** Motions to compel are subject to the general motion requirements set forth in LR 7.1.

## **VI. TRIALS**

**Editor's Note:** See also LR 83.1, Attorneys: Admission to Practice before the Court.

### **LR 39: TRIAL BY JURY OR BY THE COURT**

#### **LR 39.1 PLEADINGS AND EXHIBITS; APPEAL RECORDS; CLOSED FILES**

Refer to LR 79.1

#### **LR 39.2 TAXATION OF COSTS IN LATE-SETTLING CASES**

**A. Settlement Before Trial.** Whenever a civil action scheduled for jury trial is settled or otherwise disposed of in advance of the actual trial, then, except for good cause shown, juror costs for one day shall be assessed equally against the parties and their counsel or otherwise assessed or relieved as directed by the court. Juror costs include attendance fees, per diem, mileage, and parking. No juror costs will be assessed if notice of settlement or other disposition of the case is given to both the courtroom deputy of the judge to whom the case is assigned and to the Jury Section of the clerk's office one full business day prior to the scheduled trial date.

**B. Settlement Before Verdict.** Except upon a showing of good cause, the court shall assess the juror costs equally against the parties and their counsel whenever a civil action proceeding as a jury trial is settled at trial in advance of the verdict. The judge may, in the discretion of the judge, direct that the juror costs be relieved or that they be assessed other than equally among the parties and their counsel.

#### **LR 39.3 ATTORNEYS: AT TRIAL**

##### **A. Presence During Trial.**

**(1) Presence Required.** It shall be the duty of counsel in all jury cases to be present at all portions and phases of trial including the time during which the jury is considering its verdict, unless excused by the court. The court and court officials shall have no duty to telephone or notify counsel after the jury has retired to consider the verdict.

**(2) Presumptions.** Unless the contrary affirmatively appears of record, it will be presumed that the parties and their counsel were present at all stages of the trial or, if absent, that their absence was voluntary and constituted a waiver of their presence.

#### **B. Limitations on Participation.**

**(1) Witness Examination.** Unless the court permits otherwise, only one (1) attorney on each side shall examine or cross-examine a witness.

##### **(2) Argument to the Jury.**

**(a)** Unless the court permits otherwise, the merits of an action or proceeding shall not be argued by more than two (2) attorneys on each side.

**(b)** The party bearing the burden of persuasion at trial shall be entitled to open and close the arguments to the jury.

**(c)** If the party waives the party's right to make an opening argument, the party's rebuttal argument is limited to those matters argued by the opposing party in that party's closing argument.

**(3) Attorney as Witness.** In this court, an attorney for a party who is examined as a witness in an action or proceeding and who gives testimony on the merits shall not be permitted to argue the merits of the case or proceeding, either to the court or to the jury, except with the permission of the court.

### **LR 39.4 RESTRICTIONS ON MEDIA AND RELEASE OF INFORMATION**

Refer to LR 83.4

### **LR 39.5 CONTINUANCES**

**A. Generally.** A continuance of any trial, pretrial conference, or other hearing will be granted only on the basis of exceptional circumstances. No such continuance will be granted on stipulation of counsel alone, but shall require an order of the court.

**B. Absence of Witnesses.** Motions for continuance on account of the absence of any witness must show the steps which have been taken to secure the attendance of the witness and must reveal the nature of the witness' testimony. The motion must also state the time at which the witness will be available and, unless waived, must include a certificate of a doctor when illness of the witness is claimed. The

stipulation of the adversary as to the witness' testimony shall be sufficient reason for denial of the motion for continuance.

## **LR 40: ASSIGNMENT OF CASES FOR TRIAL**

### **LR 40.1 TRIAL CALENDAR**

A case shall be presumed ready for trial on the first calendar after the pretrial order is filed unless another time is specifically set by the court.

## **LR 41: DISMISSAL OF ACTIONS**

### **LR 41.1 VOLUNTARY DISMISSAL**

Orders of voluntary dismissal under Fed.R.Civ.P. 41(a)(1) may be obtained from the clerk who is authorized to grant, sign, and enter such orders of dismissal.

### **LR 41.2 DISMISSAL WITHOUT PREJUDICE**

**A. Omission of Response Date on Summons.** Failure of a party or attorney for a party to state the correct response time on a summons or notice of lawsuit and request for waiver of service of summons attached to a complaint, third-party complaint, or any other pleading that requires a summons shall constitute grounds for dismissal of the action without prejudice.

**B. Failure to Effectuate Service of Process.** In accordance with Fed.R.Civ.P. 4, the court may, with notice to the party on whose behalf service was required, dismiss the action without prejudice as to any defendant not served within 120 days after the filing of the complaint.

**C. Failure to Update Office Address and Number.** The failure of counsel for a party or of a party appearing *pro se* to keep the clerk's office informed of any change in address and/or telephone number which causes a delay or otherwise adversely affects the management of the case shall constitute grounds either for dismissal of the action without prejudice or for entry of a default judgment.

### **LR 41.3 DISMISSAL FOR WANT OF PROSECUTION**

**A. Dismissal Authorized.** The court may, with or without notice to the parties, dismiss a civil case for want of prosecution if:

(1) A plaintiff or attorney willfully fails or refuses to make a case ready or refuses to cause a case to be made ready for placement on the trial calendar; or

(2) A plaintiff or plaintiffs attorney shall, after notice, fail or refuse to appear at the time and place fixed for pretrial or other hearing or trial in a case or fail or refuse to obey a lawful order of the court in the case; or

(3) A case has been pending in this court for more than six (6) months without any substantial proceedings of record, as shown by the record docket or other manner, having been taken in the case.

**B. Adjudication on the Merits.** In accordance with the provisions of Fed.R.Civ.P. 41(b), a dismissal for want of prosecution operates as an adjudication upon the merits of the action unless the court specifies otherwise in its order of dismissal.

## **LR 43: TAKING OF TESTIMONY**

### **LR 43.1 DEPOSITION TESTIMONY AT TRIAL**

Counsel are required to list in the Pretrial Order all persons whose testimony at trial will be given by deposition and designation of the portions of each person's deposition which will be introduced. Objections not filed by the date on which the case is first scheduled for trial shall be deemed waived or abandoned. Extraneous and unnecessary matters, including non-essential colloquy of counsel, shall not be permitted to be read into evidence. No depositions shall be permitted to go out with the jury.

### **LR 43.2 EXCUSAL OF WITNESSES**

All witnesses called to testify will be subject to the control of counsel who subpoenaed them (or secured their voluntary appearance). At the close of the witness' testimony, counsel need not ask the court's permission to excuse the witness. Rather, the witness may be excused unless other counsel requests at that time that the witness not be excused. If the witness is not excused, the witness must remain within the environs of the courtroom for the remainder of the court session on that day. Attendance on subsequent dates is not required unless the party desiring the witness' attendance serves a subpoena upon the witness. Payment of a witness' per diem and other covered expenses is the responsibility of counsel who on that date has the witness under subpoena.

## **LR 47: SELECTION OF JURORS**

### **LR 47.1 JURY SELECTION AND QUALIFICATION**

Prospective grand and petit jurors shall be selected and qualified and jury panels shall be drawn pursuant to the Jury Selection and Service Act of 1968, 28 U.S.C. §§ 1861-70, and the current Jury Plan of this court. The Jury Plan of this court is attached hereto as Appendix A and is made a part of these rules.

## **LR 47.2 VOIR DIRE PROCEDURES**

Counsel shall include in the proposed Pretrial Order:

(1) A joint listing of the questions which the parties wish the court to propound to the jurors concerning their legal qualifications to serve.

(2) A listing by each party of requested general voir dire questions to the jurors. The court will question prospective jurors as to their address and occupation and as to the occupation of a spouse, if any. Follow-up questions by counsel may be permitted. The determination of whether the district judge or counsel will propound general voir dire questions is a matter of courtroom policy which shall be established by each judge.

## **LR 47.3 RESTRICTED CONTACT WITH JURORS**

During trial or after the conclusion of a trial, no party, agent or attorney shall communicate with any members of the petit jury, including alternate or excused jurors, before which the case was tried without first receiving permission of the court.

## **LR 49: SPECIAL VERDICTS AND INTERROGATORIES**

### **LR 49.1 SPECIAL VERDICTS**

If counsel desire that the case be submitted to the jury in a manner other than upon a general verdict, counsel must attach the proposed verdict form to the Pretrial Order.

## **LR 51: INSTRUCTIONS TO JURY; OBJECTION**

### **LR 51.1 REQUESTS TO CHARGE**

**A. When Due; Procedures.** Requests to charge shall be filed with the courtroom deputy of the judge to whom the case is assigned no later than 9:30 a.m. on the date on which the case is calendered (or specially set) for trial unless otherwise ordered by the court. The requests shall be numbered sequentially with each



request and the citations to authorities supporting the request presented on a separate sheet of paper. In addition to the original, counsel must file two copies of each request with the courtroom deputy and must serve one copy of the requests on opposing counsel.

**B. Content Sources.** Requests should be drawn from the latest edition of the Eleventh Circuit District Judges Association's Pattern Jury Instructions and O'Malley's Federal Jury Practice and Instructions whenever possible. In other instances, only the applicable legal principle from a cited authority should be requested. A short, one (1)-page or less, statement of the party's contentions must be attached to the requests.

## **LR 53: MASTERS**

### **LR 53.1 SERVICE AS SPECIAL MASTER**

Pursuant to 28 U.S.C. § 636(b)(2), a judge may designate a magistrate judge to serve as a special master in a civil case assigned to that judge. Appointments of magistrate judges as special masters are subject to Fed.R.Civ.P. 53 only when the order referring the matter expressly provides that the reference is made under Rule 53.

## **VII. JUDGMENT**

### **LR 54: JUDGMENT COSTS**

#### **LR 54.1 BILL OF COSTS**

A bill of costs must be filed by the prevailing party within thirty (30) days after the entry of judgment. A bill of costs which is not timely filed will result in the costs not being taxed as a part of the judgment.

#### **LR 54.2 ATTORNEY'S FEES**

**A. Procedure for Determination.** If a final judgment, including a judgment made final under Fed.R.Civ.P. 54(b), does not determine (or establish other procedures for determining) the amount of attorney's fees which are authorized by federal statute to be awarded by the court to or on behalf of a prevailing party or which may be sought under the equitable or inherent powers of the court, the following procedures shall apply:

(1) The award of such fees (and expenses incident thereto not ordinarily allowable as taxable costs) shall be requested by special written motion addressed to the court and shall not be included in a cost bill, in a motion for taxation or retaxation of costs, or in a motion under Fed.R.Civ.P. 50(b), 52(b), or 59.

(2) The motion shall specify the judgment and the statute or other grounds on the basis of which entitlement to the award is claimed and shall state the amount (or provide a fair estimate of the approximate amount) of the fees and expenses sought. Within thirty (30) days (or such other period as the court may prescribe) after filing the motion, the movant shall file and serve a detailed specification and itemization of the requested award, with appropriate affidavits and other supporting documentation.

(3) Hearings on the motion shall be conducted by the court in accordance with Fed.R.Civ.P. 43(e) and Fed.R.Civ.P. 78 and in accordance with applicable statutory and decisional standards.

(4) Pendency of a motion filed under this rule does not extend the time for appealing from, or for filing a motion under Fed.Rs.Crim.P. 50(b), 52(b), or 59 directed to the judgment giving rise to the claim for attorney's fees. The court may, however, take the motion into consideration in ruling upon a motion for extension of time for appealing filed under Fed.R.App.P. 4(a)(5).

## **LR 55: DEFAULT**

### **LR 55.1 MAGISTRATE JUDGES: DEFAULT JUDGMENTS**

**A. Pretrial Matters on Reference from Judge.** The magistrate judges may, in appropriate cases, enter default judgments and review motions to set aside default judgments.

## **LR 56: SUMMARY JUDGMENT**

### **LR 56.1 MOTIONS FOR SUMMARY JUDGMENT**

**A. Generally.** Motions for summary judgment shall be filed in accordance with the provisions of Fed.R.Civ.P. 56, except that no date for a hearing shall be set until after the party opposing the motion has had twenty-one (21) days after service of the motion or a responsive pleading is due, whichever is later, in which to file a responsive pleading. In accordance with LR 7.1C, the parties shall not be permitted to file supplemental briefs and materials, with the exception of a reply by the movant, except upon order of the court.

**B. Form of Motion.**

**(1)** A movant for summary judgment shall include with the motion and brief a separate, concise, numbered statement of the material facts to which the movant contends there is no genuine issue to be tried. Each material fact must be numbered separately and supported by a citation to evidence proving such fact. The court will not consider any fact: (a) not supported by a citation to evidence (including page or paragraph number); (b) supported by a citation to a pleading rather than to evidence; (c) stated as an issue or legal conclusion; or (d) set out only in the brief and not in the movant's statement of undisputed facts.

**(2)** A respondent to a summary judgment motion shall include the following documents with the responsive brief:

**a.** A response to the movant's statement of undisputed facts.

(1) This response shall contain individually numbered, concise, nonargumentative responses corresponding to each of the movant's numbered undisputed material facts.

(2) This Court will deem each of the movant's facts as admitted unless the respondent: (i) directly refutes the movant's fact with concise responses supported by specific citations to evidence (including page or paragraph number); (ii) states a valid objection to the admissibility of the movant's fact; or (iii) points out that the movant's citation does not support the movant's fact or that the movant's fact is not material or otherwise has failed to comply with the provisions set out in LR 56.1 B.(1).

(3) The court will deem the movant's citations supportive of its facts unless the respondent specifically informs the court to the contrary in the response.

(4) The response that a party has insufficient knowledge to admit or deny is not an acceptable response unless the party has complied with the provisions of Fed.R.Civ.P. 56(f).

**b.** A statement of additional facts which the respondent contends are material and present a genuine issue for trial. Such separate statement of material facts must meet the requirements set out in LR 56.1 B.(1).

**(3)** If respondent provides a statement of additional material facts, then, within the time allowed for filing a reply, the movant shall file a response to each of the respondent's facts. The range of acceptable responses is limited to: (a) an objection to the admissibility of the evidence upon which the respondent relies, (b) an objection pointing out that the respondent's evidence does not support the respondent's fact; (c) an objection on the ground that the respondent's fact is not material or does not otherwise comply with the provisions set out in LR 56.1 B.(1), and (d) a concession that the court can properly consider the respondent's evidence for purposes of the summary judgment motion.

**C. Exhibits.** The parties must file as exhibits to their briefs the originals of any affidavits relied upon in their motion and response papers, and copies of those excerpts of depositions or other discovery materials that are referenced therein. In addition, when a portion of a deposition is referenced and submitted, then the party in custody of the original of that deposition shall cause the entire deposition to be filed with the Court. LR 26.3B(1).

**D. Time.** Motions for summary judgment shall be filed as soon as possible, but, unless otherwise ordered by the court, not later than thirty (30) days after the close of discovery, as established by the expiration of the original or extended discovery period or by written notice of all counsel, filed with the court, indicating that discovery was completed earlier.

## **LR 58: ENTRY OF JUDGMENT**

### **LR 58.1 FILING OF ORDERS**

Whenever an attorney obtains an order of any nature from a district judge or magistrate judge in chambers, the attorney shall immediately deliver the order to the clerk for filing.

### **LR 58.2 SATISFACTION OF JUDGMENT**

Whenever the amount directed to be paid by any judgment or decree, together with interest and the clerk's statutory charges, shall have been paid into the court, the clerk shall enter satisfaction of said judgment and shall note same on the margin of the judgment. Satisfaction may be evidenced by either:

- (1) the filing of a satisfaction of judgment by the prevailing party, or
- (2) the filing of a motion by the defendant requesting satisfaction of the judgment of record. A copy of the motion must be served upon the prevailing party who shall have fourteen (14) days within which to object. Otherwise, the clerk shall be authorized to mark the judgment paid and satisfied in full.

No pleadings or motions relating to the satisfaction of judgments shall be accepted for filing prior to the expiration of the time allowed for filing a bill of costs.

Only the United States Attorney or authorized designee is authorized to sign an acknowledgment of satisfaction on behalf of the United States. The attorney, legal representative, or assignee of a judgment creditor must present evidence of authority to act when presenting an acknowledgment of satisfaction on behalf of the judgment creditor.

## **LR 58.3 REMITTITURS**

**A. Judgment Affirmed or Appeal Dismissed.** When the judgment of this court in a civil case has been affirmed or the appeal dismissed, the clerk shall immediately upon receipt of the remittitur from the appellate court file it upon record and shall notify counsel of record and/or the parties that the remittitur has been filed.

**B. Judgment Modified, Vacated, or Reversed.** When the judgment of this court has been modified, vacated, or reversed on appeal, the clerk shall immediately present a proposed order to the court making the remittitur the judgment of this court and shall notify counsel and/or the parties of the entry of said order and that they are required to prepare and present promptly to the court any such further orders as may be required.

## **VIII. PROVISIONAL AND FINAL REMEDIES**

### **LR 64: SEIZURE OF PERSON OR PROPERTY**

#### **LR 64.1 ENFORCEMENT OF INTERNAL REVENUE LAWS**

In accordance with 26 U.S.C. § 7402, the magistrate judges are authorized to issue orders, warrants, or other processes as may be necessary or appropriate for the enforcement of Internal Revenue Laws including, but not limited to, warrants for seizure of property in satisfaction of tax assessments.

### **LR 65: INJUNCTIONS AND RESTRAINING ORDERS**

#### **LR 65.1 REQUEST TO JUDGE FOR IMMEDIATE ORDER**

Whenever an attorney seeks an immediate order of the court, the attorney must submit a motion to the district judge to whom the case has been assigned if the district judge is present within the district. If the district judge is not available or if the case has not yet been assigned to a particular judge, the attorney shall contact the clerk for instructions as to which judge the motion should be submitted. All courtesy copies of proposed orders must be clearly marked. Refer to LR 7.5B regarding notice to adversary.

#### **LR 65.2 MOTIONS TO WAIVE USUAL PROCEDURES**

Upon written motion and for good cause shown, the court may waive the time requirements of LR 7.1 and grant an immediate hearing on any matter requiring such expedited procedure. The motion shall set forth in detail the necessity for such expedited procedure.

## **LR 65.1: SECURITY: PROCEEDINGS AGAINST SURETIES**

### **LR 65.1.1 PROCEDURES RELATING TO BONDS**

**A. Approval of Surety by Clerk.** The clerk shall approve as to surety all bonds requiring approval (except criminal and bankruptcy bonds), unless otherwise provided by law, rules, or direction of the court.

**B. Officers of Court Not Accepted as Surety.** No clerk, marshal, other officer of this court, or any practicing attorney at law will be accepted as surety on any bond or undertaking in any action or proceeding in this court.

**C. Surety Qualifications for Bonds for Costs.** Unless otherwise provided by the court, every bond for costs under this rule must have as surety either:

- (1) A cash deposit equal to the amount of the bond, or
- (2) A corporation authorized to execute bonds under 31 U.S.C. §§ 9304-08,

or

(3) An individual of the district with sufficient property, above all homestead and exemption rights, to render him or her liable for the amount of the bond and all costs incident to collecting same.

**D. Bonds Where Minor Involved.** In all cases where a minor has sued and recovered by and through a next friend, the bond to be made by the next friend shall, unless otherwise ordered by the court, be in all respects as provided by the existing law of the State of Georgia, except that the obligee in the bond shall be the minor for whom recovery is had, and the bond shall be approved by the clerk.

**E. Bonds for Costs on Appeal.** A party in a civil case appealing a judgment from this court shall not be routinely required to file a bond for costs on appeal. The court may, however, upon meritorious motion by a party or on its own initiative, order an appellant or cross-appellant to file a bond for costs in an amount and with those conditions as the court may designate in its order.

## **LR 67: DEPOSIT IN COURT**

### **LR 67.1 REGISTRY FUNDS AND OTHER FUNDS IN THE CUSTODY OF THE CLERK OF COURT**

**A. Registry Fund Accounts.**

**(1) Generally.** An order of the court shall be required directing that funds in litigation be deposited in or disbursed from the registry of the court. All orders submitted to a judge pertaining to the investment or disbursement of registry funds must be certified by a financial deputy clerk to show that, prior to presentation of the order, counsel has contacted the financial section of the clerk for a determination of:

**(a)** For investment orders: U.S. Treasury Regulations governing deposits of registry funds in banking institutions;

**(b)** For disbursement orders: The amount of funds deposited in the registry of the court in a particular case.

All orders signed by a judge directing that registry funds be invested into interest-bearing accounts other than the court's investment accounts as described in LR 67.1B(3) must be served by counsel upon the Clerk of Court or Chief Deputy Clerk. Counsel's failure to effect service shall relieve the clerk of any personal liability relative to compliance with the investment order.

**(2) Designated and Qualified Settlement Funds.** If the court establishes or approves a "designated or qualified settlement fund" that will be held in the registry of the court, the court either shall approve the person named in the settlement agreement as administrator or shall designate as administrator the party that deposited the funds into the court's Registry. See Section 468B Internal Revenue Code, 26 U.S.C. § 468B, and applicable Internal Revenue Service regulations including 26 C.F.R. § 1.468B (57 Federal Register 60983-60995). The administrator shall be responsible for fulfilling all obligations of the fund relating to tax procedures, including all necessary filings and payments of taxes. If, for any reason, the order establishing the fund does not designate or approve an administrator, the party depositing the fund shall be deemed to be administrator for the purposes of complying with the fund's tax obligations and requirements, including the filing of necessary returns and the payment of all taxes.

## **B. Receipt and Deposit of Registry Funds.**

**(1) Registry Administration Fee.** The Director of the Administrative Office of the United States Courts has established, pursuant to Judicial Conference authorization, a registry fee to be assessed for the administration of funds held in the registry of the court and placed in interest-bearing accounts or instruments.

The administrative fee assessed on a particular registry account shall be determined according to the fee schedule in effect at the time the account was opened or according to any amended fee schedule that is applicable to the account. The administrative fee is withdrawn from the income earned on the registry account at the time the account is closed for distribution. All fees collected shall be

deposited by the clerk into the United States Treasury to reimburse the appropriations to the judiciary.

The director publishes the fee schedule periodically in the Federal Register. Copies of the fee schedules are also available at the public filing counter of the clerk's office in each division.

**(2) Deposits into United States Treasury.** Monies deposited into the registry of the court which have remained unclaimed for at least five (5) years and which are subject to withdrawal under the provisions of 28 U.S.C. § 2042; confiscated funds in criminal proceedings (unless the court has expressly directed that these funds be deposited into an interest-bearing account); unclaimed wages in National Labor Relations Board actions; undeliverable monies; funds in which it is reasonably believed that the United States has substantial beneficial interest; funds deposited as a result of an answer to a summons of garnishment; and all other funds which the interest of justice so requires shall be deposited by the clerk into the official checking account of the Treasurer of the United States in accordance with the provisions of 28 U.S.C. § 2043.

**(3) Deposits into Interest-Bearing Accounts.** All monies tendered by litigants which are reasonably expected to accrue to the ultimate benefit of private parties (specifically including those funds deposited pursuant to 28 U.S.C. § 1335 in civil actions of interpleader or in the nature of interpleader); cash security for bail bonds in criminal cases; cash cost bonds deposited in civil cases ordered removed under 28 U.S.C. § 1446; injunction bonds as ordered by the court; deposits for Special Master's fees as ordered by the court; and cash appeal bonds ordered by the court pursuant to LR 65.1.1E, will be automatically deposited into one of the court's investment accounts, including, but not limited to, a commercial market investment account or commercial premium investment account at a depository designated by the court at the existing rate of interest. The deposit shall be made into the appropriate type of account paying the highest interest rate as determined by the total amount being deposited.

**(4) Next Friend Cases.** All monies made payable by decree of this court to minor and incompetent plaintiffs which are not paid directly to the plaintiff's authorized representative shall be deposited into one of the court's investment accounts at the designated depository. Such funds shall be disbursed only upon order of the court and only in the manner specified in the Order.

**(5) Cash Security for Criminal Bonds.** The magistrate judge shall transmit all cash tendered as security for bonds posted in criminal cases to the clerk for deposit into one of the court's savings accounts at the designated depository.

#### **C. Investment of Registry Funds.**

**(1) Investment at Another Depository.** Upon motion of an interested party, a judge of this court may in his or her discretion instruct the Clerk of Court to



withdraw registry funds previously deposited into one of the court's investment accounts at a designated depository and direct reinvestment of the funds into an interest-bearing account at an approved depository other than that designated by the court. All funds shall be held in the court's investment account until the deposited check or draft has cleared the drawee bank.

A listing of the current investment opportunities offered by the court's designated depository, with approval of the federal banking regulatory agency, and the minimum amounts necessary for participation in each investment form is available at the public filing counter in each division.

**(2) Release to Trustee.** The court may consider a consent motion by the parties to have funds which are deposited in the registry account released to a trustee for some alternative form of investment, which may be reasonably expected to produce a higher return of interest. At the direction of the court, the trustee may be required to post a fiduciary bond.

**(3) Transfer of Funds to Registry.** The court may, upon motion of the parties and/or in the discretion of the district judge, direct that registry funds on deposit in other banking institutions be transferred to the designated depository for investment in some form of interest-bearing account available under this rule.

**(4) Beneficiaries.** Unless the court specifically provides otherwise, the ultimate beneficiary or beneficiaries of any appreciation resulting from investment in interest bearing accounts, bonds, or securities shall be that person or those persons ultimately found to be entitled to receive the principal thereof.

#### **D. Disbursement of Registry Funds.**

**(1) Motion for Disbursement.** All motions for disbursement of registry funds shall specify the principal sum initially deposited, the amount(s) of principal funds to be disbursed and to whom, payee or attorney, the disbursement is to be made along with complete mailing instructions (full address and zip code of payee and attorney) and have attached thereto a proposed order of disbursal.

**(2) Order of Disbursal.** Each proposed order of disbursal shall contain therein the following language: "...the clerk is authorized and directed to draw a check(s) on the funds on deposit in the registry of this court in the principal amount of \$\_\_\_\_\_ plus all accrued interest, minus any statutory users fees, payable to (name of payee) and mail or deliver the check(s) to (payee or attorney)."

If more than one check is to be issued on a single order, the portion of principal due each payee must be separately stated in the order.

Social Security and Tax Identification Numbers and mailing addresses will not be included in a proposed order of disbursal, but that information will be provided by counsel for each payee in a cover letter or other document conveyed to but not filed with the court.

**(3) Payee Name.** On all checks drawn by the clerk on deposits made into the registry of the court, the name of the payee shall be written as that name appears in the court's order providing for disbursement.

**(4) Time of Disbursement.** The clerk will issue disbursements as soon after receipt of the Order for Disbursement as the business of the clerk's office allows, except when it is necessary to allow time for a check or draft to clear or when an order is appealable, and the disbursement may not be made until the time for appeal has expired.

**E. Disbursement of Monies Other than Registry Funds.** Funds other than registry funds shall be disbursed by check drawn on the Treasury of the United States. The payee's name will be written as the name appears in the disbursement voucher approved by the clerk or designated approving officer. The name of the payee in the disbursement voucher shall conform to the name appearing in the clerk's records of the case to which the disbursement relates. The clerk shall endeavor to note of record the given name of all individuals making deposits of monies with the clerk. In those cases where the given name appears of record, disbursement vouchers and checks there under shall show the full given name, additional initials, if any, and the surname of the payee.

## **LR 69: EXECUTION**

### **LR 69.1 ISSUANCE OF WRITS OF EXECUTION**

Unless otherwise ordered by the court, Writs of Execution shall be prepared by the prevailing party or that party's attorney on forms made available by the clerk at the public filing counter. Writs so prepared must be approved and issued by the clerk.

## **IX. SPECIAL PROCEEDINGS**

### **LR 71A: CONDEMNATION OF PROPERTY**

#### **LR 71A.1 MASTER FILE FOR SEPARATE ACTIONS**

The clerk is authorized to establish a master file for those condemnation actions in which the United States files more than one condemnation action, but only one Declaration of Taking covering all of the actions.

The filing of the Declaration of Taking in the master file shall constitute a filing of the Declaration in each of the separate actions.

## **LR 72: MAGISTRATE JUDGES: PRETRIAL ORDERS**

### **LR 72.1 MAGISTRATE JUDGES: CIVIL JURISDICTION AND DUTIES**

**A. Non-Dispositive Pretrial Matters on Reference from District Judge.** Non-dispositive matters in a civil action referred to a magistrate judge by a district judge shall be heard and an order entered in compliance with Fed.R.Civ.P. 72(a).

**B. Dispositive Motions on Reference from District Judge.** A magistrate judge shall promptly conduct any such proceedings as may be required in connection with a dispositive pretrial motion referred to the magistrate judge by a district judge. Objections to the magistrate judge's recommendation for disposition shall be processed in accordance with Fed.R.Civ.P. 72(b)(2). A listing of dispositive motions is contained in 28 U.S.C. § 636(b)(1).

**C. Prisoner Petitions.** Except in cases in which the death penalty has been imposed, the magistrate judges may, unless otherwise directed:

(1) Review habeas corpus petitions filed by state prisoners under 28 U.S.C. §§ 2241, 2254 to determine the petitioner's eligibility to proceed *in forma pauperis*, issue orders to show cause, and any other orders necessary to obtain a complete record and issue orders pursuant thereto; conduct evidentiary hearings; and submit a report and recommendation to the district judge as to the proper disposition of the petition.

(2) Review habeas corpus petitions and motions filed by federal prisoners under 28 U.S.C. §§ 2241, 2254 to determine the petitioner's eligibility to proceed *in forma pauperis*, issue orders to show cause, and orders pursuant thereto; conduct evidentiary hearings; and submit a report and recommendation to the district judge as to the proper disposition of the petition or motion.

(3) Review civil suits challenging conditions of confinement and for deprivation of rights filed under 42 U.S.C. § 1983 to determine the petitioner's eligibility to proceed *in forma pauperis*, and issue orders pursuant thereto; conduct evidentiary proceedings; and submit a report and recommendation to the district judge as to the proper disposition of the case. Such proceedings shall be conducted in compliance with Fed.R.Civ.P. 72(b).

**D. Assignments to a Magistrate Judge.** In a case referred to a magistrate judge, the magistrate judge will perform the duties assigned to him or her by the court or a district judge under court rule, plan, order or other document. A magistrate judge will perform other duties when those duties are assigned to him or her by the court or a district judge under court rule, plan order, or other document. The duties assigned to a magistrate judge by the court, and the manner of their

distribution and assignment, are specified in a standing order of the court, available in the clerk's office and on the court's website at [www.gand.uscourts.gov](http://www.gand.uscourts.gov).

## **LR 73: MAGISTRATE JUDGES: TRIAL BY CONSENT AND APPEAL OPTIONS**

### **LR 73.1 TRIALS OF CIVIL CASES UPON CONSENT OF PARTIES**

**A. Jurisdiction.** In accordance with 28 U.S.C. § 636(c), the magistrate judges are authorized, upon the consent of all parties, to conduct any and all proceedings in any civil case filed in this court, including a jury or nonjury trial, and to order the entry of a final judgment. The magistrate judges shall be authorized to do and perform any act which could be done by a judge. A record of the proceedings shall be made in accordance with 28 U.S.C. § 636(c)(7). See also Fed.R.Civ.P. 73.

#### **B. Procedure.**

(1) Concurrently with the filing of a complaint in a civil case, the clerk shall notify the plaintiff or plaintiffs of the opportunity to consent to have the case heard, determined, and final judgment on the case entered by a magistrate judge. The notice shall be served with the complaint upon all other parties. At the direction of a judge, additional notices may be sent by a courtroom deputy at later stages of the proceedings. The notice used by the clerk shall conform to Form 81, Federal Rules of Civil Procedure Appendix of Forms (AO 85).

(2) Except as provided in (3) below, a joint form consenting to the exercise of jurisdiction by a magistrate judge may be filed at any time. Consent forms complying with Form 34, Federal Rules of Civil Procedure Appendix of Forms (AO 85) are available at the public filing counter in each division.

(3) For Social Security Appeals, the Commissioner of Social Security, who is represented by the United States Attorney, shall be deemed to have provided consent unless that consent is withdrawn as to a particular case at the time of filing the initial response to the complaint. Absent a withdrawal of consent, the clerk will reassign a case to the Magistrate Judge before whom the case is pending upon receipt of the Plaintiff's Notice and Consent to Proceed before a Magistrate Judge.

## **X. DISTRICT COURTS AND CLERKS**

### **LR 77: DISTRICT COURTS AND CLERKS**

### **LR 79: BOOKS AND RECORDS KEPT BY THE CLERK AND ENTRIES THEREIN**

## **LR 79.1 PLEADINGS AND EXHIBITS; APPEAL RECORDS; CLOSED FILES**

**A. Removal of Pleadings.** Original pleadings in the custody of the clerk may be removed from the clerk's office by the district judges, magistrate judges, official court reporters, special masters, or law clerks when necessary to expedite the business of the court.

### **B. Filing of Exhibits.**

**(1) Admitted Exhibits.** Exhibits, other than sensitive exhibits, offered and admitted into evidence at trial or at any hearing shall be delivered to the courtroom deputy who shall keep them in custody until a verdict is rendered in a jury case or a final order entered by the court in a nonjury case, unless the court has ordered otherwise. Sensitive exhibits shall remain in the custody of the introducing party unless the court orders otherwise. The deputy may permit United States magistrate judges and official court reporters to have custody of exhibits when necessary to expedite the business of the court. No persons other than United States magistrate judges and official court reporters shall be permitted to remove exhibits from the courtroom deputy's custody except upon order of the court in extreme circumstances.

**(2) Rejected Exhibits.** Unless otherwise ordered by the court, exhibits tendered but not admitted into evidence shall be retained by the courtroom deputy in the same manner as admitted exhibits, except sensitive exhibits which shall remain in the custody of the introducing party unless the court has ordered otherwise. Rejected exhibits shall be identified as having been rejected on both the exhibit list and on the exhibits themselves.

**(3) Withdrawn Exhibits.** Exhibits that are either withdrawn or not tendered shall not be retained by the courtroom deputy, but shall be shown on the exhibit list as having been withdrawn or not tendered.

### **C. Inspection and Copying of Exhibits.**

**(1) Sensitive Exhibits.** Sensitive and special criminal evidence may not be inspected or copied without specific leave of the court. Such evidence includes, without limitation, narcotics, weapons, currency, exhibits of a pornographic nature, articles of high monetary value, exhibits depicting or describing a particularly brutal crime, exhibits in a highly publicized case, and any other evidence designated by the court as being sensitive.

**(2) Sealed Exhibits.** Exhibits ordered sealed or impounded by the court may not be inspected or copied by anyone, including attorneys for the parties, except upon leave of the court.

**(3) Other Exhibits.** Attorneys of record for any party may inspect or copy without specific leave of court all exhibits, other than those exhibits defined in (1) and (2) above, which have been admitted into evidence or rejected.

**(4) Presence of Clerk Required.** All inspections of exhibits of any type covered by this rule shall be conducted in the presence of the clerk or an authorized deputy clerk of this court. Inspections by attorneys for the parties are not excepted from this rule nor is application of this rule affected by whether the inspection is being made with or without leave of court.

**D. Return of Exhibits.**

**(1) Generally.** Unless otherwise ordered by the court, the clerk shall retain possession of all exhibits and substitute exhibits (see also LR 16.4B(19)(a)) received or offered into evidence at trial or any hearing until after the time for appeal has expired or, in appealed cases, until entry of the appellate court's mandate. The introducing party or the party's attorney shall retain custody of sensitive exhibits, documentary exhibits larger than 8 ½" x 11", and exhibits other than documents, during these times, unless otherwise ordered by the court.

**(2) Reclamation and Disposition of Unclaimed Exhibits.** Counsel shall reclaim all exhibits from the clerk of court within thirty (30) days following expiration of the applicable time period as stated in (1) above. Exhibits not removed in accordance with this Rule shall be destroyed or otherwise disposed of by the clerk.

**E. Availability of Exhibits for Inspection or Appeal.** The filing party or the party's attorney shall grant a reasonable request of any party to examine an exhibit returned to the filing party's custody. Any exhibit in the custody of the filing party or the party's attorney shall, upon request, be returned immediately to the clerk. In the event transfer of oversized documentary exhibits or exhibits other than documents to the appellate court is required, the filing party or the party's attorney shall be responsible for arranging and paying for such transportation.

**F. Chain of Custody.** The filing party or the party's attorney shall be required to maintain a chain of custody for each returned exhibit during the time permitted for filing an appeal (see Fed.R.App.P. 4) and during the pendency of an appeal filed in compliance with Fed.R.App.P. 3.

**G. Transcripts.** The original transcripts of testimony and any record of proceedings filed with the clerk by an official court reporter or commissioner shall not be removed from the clerk's office by the parties or anyone acting on their behalf.

**H. Appeal Records.** LR 79.1E does not prohibit the forwarding of original records to the Court of Appeals in accordance with Fed.Rs.App.P. 10 and 11. Pursuant to the provisions of Rule 11(C) of those rules, the parties may request this court to

retain the appeal record temporarily for use by the parties in preparing appellate papers.

**I. Closed Files.** Closed files of this court are forwarded to the Federal Records Center for this district, located in East Point, Georgia. Persons desiring use of any such files may, upon good cause shown on an appropriate form furnished by the clerk and payment of the prescribed fee, request that such files be returned for examination in the clerk's office. Alternatively, upon proper showing of good cause, the clerk may provide the requesting person the accession number(s) for the closed file(s), thereby facilitating review of the files at the Federal Records Center.

## **XI. GENERAL PROVISIONS**

### **LR 83: RULES BY DISTRICT COURTS**

#### **LR 83.1 ATTORNEYS: ADMISSION TO PRACTICE BEFORE THE COURT**

##### **A. Admission to the Bar of this Court.**

**(1) Eligibility.** Any attorney who is an active member in good standing of the State Bar of Georgia is eligible for admission to the bar of this court. Continued membership in this court's bar is contingent on the attorney's maintaining active status in good standing with the State Bar of Georgia.

##### **(2) Admissions Procedure.**

**(a)** The clerk shall arrange and schedule a ceremonial admissions day twice each year to admit those attorneys having recently passed the Georgia Bar Examination. The clerk will publish appropriate notice of the dates for the special admissions ceremonies and the instructions applicable thereto.

**(b)** Admission proceedings shall be regularly held in open court before a judge of this court as the first order of business on any Monday morning. Applicants for admission must complete and file with the clerk the petition for admission available in the clerk's office and must pay the prescribed enrollment fee.

The following oath shall be administered to each petitioner at the time of admission:

"I do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will bear true faith and allegiance to the Government of the United States; that I will maintain the respect due to the courts of justice and judicial offices; that I will well and faithfully discharge my duties as an attorney and officer of this court;

and that I will demean myself uprightly and according to the law and the recognized standards of ethics of the legal profession. So help me God."

**(3) Attorneys for United States.** Attorneys representing the United States government or any agency thereof who reside within this district are required to be admitted to this court's bar before they shall be permitted to practice before this court. Notwithstanding this rule and provided they are at all times members of the bar of some United States District Court, assistant United States attorneys and attorneys representing agencies of the government shall be given eighteen (18) months from the date of their commission in which to become members of the State Bar of Georgia. During this period, these attorneys shall be provisionally admitted to the bar of this court. The requirements of this rule do not apply to those government attorneys who are expressly exempted by statute from a local bar membership requirement or to judge advocates of the Army, Navy, Marine Corps, or Air Force representing the United States in Magistrates Court.

**B. Permission to Practice in a Particular Case.**

**(1) Eligibility and Procedure.** A non-resident attorney who is not an active member in good standing of the State Bar of Georgia, but who is a member in good standing of the bar of any United States court or of the highest court of any State may apply in writing for permission to appear *pro hac vice*.

Applications for admission *pro hac vice* may be obtained from the clerk. The applicant shall state under penalty of perjury the applicant's (1) residence address, (2) office address, telephone number and facsimile number, (3) the courts to which admitted to practice and the dates of admission, and (4) a statement that the applicant is in good standing and eligible to practice in all courts to which admitted. Applications for admission *pro hac vice* must be accompanied by payment of a prescribed admission fee. A non-resident attorney will not be permitted to appear until the applicant's application for admission *pro hac vice* has been signed by the district judge to whom the case is assigned or by the district judge's courtroom deputy, if so authorized by the district judge.

**(2) Designation and Duties of Local Counsel.** An attorney applying to appear *pro hac vice* must also designate a local member of the bar of this court with whom the opposing counsel and the court may readily communicate regarding the conduct of the case and upon whom papers shall be served. The designated local counsel must sign all pleadings and other papers filed in the case by the attorney appearing *pro hac vice*. The address, telephone number, facsimile number and written consent of the designated local counsel must be filed with the attorney's *pro hac vice* application.

If the non-resident attorney fails to respond to any order of the court for appearance or otherwise, the local attorney shall have the responsibility and full



authority to act for and on behalf of the client in all proceedings in connection with the case, including hearings, pretrial conferences, and trial.

**C. Standard of Professional Conduct.** All lawyers practicing before this court shall be governed by and shall comply with the specific rules of practice adopted by this court and, unless otherwise provided, with the Georgia Rules of Professional Conduct contained in the Rules and Regulations of the State Bar of Georgia and with the decisions of this court interpreting these rules and standards.

**D. Appearances.**

**(1) In Civil Cases.** An attorney's appearance as attorney of record for a party may be evidenced, for plaintiff, by signature on the complaint at filing and, for defendant, by signature on the answer to the complaint or on a Fed.R.Civ.P. 12(b) motion filed prior to answer. Any other attorney who signs a subsequent pleading or paper on behalf of a party must file a notice of appearance with the clerk. An attorney whose appearance has not been previously noticed will not be permitted to represent a party at trial or in any other court proceeding until the attorney has filed a notice of appearance with the clerk. Failure to file a notice of appearance may result in the attorneys not receiving notices, orders, or other important communications from the court.

**(2) Pro se Appearance Limitations.** Whenever a party has appeared by attorney, the party may not thereafter appear or act in the party's own behalf in the action or proceeding or take any step therein unless the party has first given notice of the party's intention to the attorney of record and to the opposing party and has obtained an order of substitution from the court. Notwithstanding this rule, the court may in its discretion hear a party in open court even though the party has previously appeared or is represented by attorney.

**(3) Duty to Supplement.** Counsel shall have, in all cases, an affirmative duty to notify the clerk's office by letter, by internet/email notification, or through CM/ECF of any change in mailing address, telephone number and/or email address. Parties appearing *pro se* shall notify the clerk's office by letter, of any change in mailing address and/or telephone number. A failure to keep the clerk's office so informed which causes a delay or otherwise adversely affects the management of a civil case shall constitute grounds for dismissal without prejudice or entry of a judgment by default.

**E. Withdrawal.**

**(1) Withdrawal Policy.** Counsel will not ordinarily be allowed to withdraw after pretrial or at a time when withdrawal will cause a delay in the trial of the case.

**(2) Motions to Withdraw.** This policy notwithstanding, an attorney wishing to withdraw the attorney's appearance in any action or proceeding or wishing to

have the attorney's name stricken as attorney of record for a party in any case shall comply with the following procedure:

(a) Submit to the clerk in duplicate for filing a motion requesting permission to withdraw.

(b) The motion shall state that the attorney has given the client fourteen (14) days prior notice of the attorney's intention to request permission to withdraw and shall specify the manner of such notice. The notice shall be served upon the client, personally or at that client's last known address, and the notice shall contain at least the following information:

(A) That the attorney wishes to withdraw;

(B) The style of the action in which counsel seeks to withdraw, the name, address and telephone number of the Clerk and opposing counsel;

(C) That the Court retains jurisdiction of the action;

(D) That the client has the burden of keeping the court informed respecting where notices, pleadings or other papers may be served;

(E) That the client has the obligation to prepare for trial or hire other counsel to prepare for trial when the trial date has been set;

(F) That if the client fails or refuses to meet these burdens, the client may suffer adverse consequences, including, in criminal cases, bond forfeiture and arrest;

(G) The dates of any scheduled proceedings, including trial, and that holding of such proceedings will not be affected by the withdrawal of counsel;

(H) That service of notices may be made upon the client at the client's last known address, and,

(I) If the client is a corporation, that a corporation may only be represented in court by an attorney, that an attorney must sign all pleadings submitted to the court, and that a corporate officer may not represent the corporation in court unless that officer is also an attorney licensed to practice law in the state of Georgia, and that failure to comply with this rule could result in a default being entered against the corporate party; and

(J) Unless the withdrawal is with the client's consent, the client's right to object within fourteen (14) days of the date of the notice. A copy of the notice shall be affixed to the motion.

(c) The attorney shall serve a copy of the attorney's motion to withdraw upon opposing counsel and upon the client after filing the motion with the clerk.

(d) Fourteen (14) days after filing, the clerk shall submit the motion to the district judge for action thereon.

Counsel wishing to withdraw from any civil action (except a class action) may be relieved from the requirement to file a motion to withdraw by filing a Certificate of Consent with the court that has been signed by the client, the withdrawing attorney, and the substituting attorney, if one has been selected by the client. If an attorney representing the United States or any agency thereof wishes to withdraw, it is not necessary that the client's signature appear on the Certificate of Consent, provided the client's consent is acknowledged by both the withdrawing and substituting attorney.

**(3) Leave of Absence.** All leaves of absence shall be subject to the approval of the court. Petitions for leave of absence for periods greater than twenty (20) days in length must be made by motion. Lead counsel must file a petition, in each individual case where an absence is requested, designating the period of absence and the reason for the absence. A proposed order for the court shall also be attached. Absence of less than twenty-one (21) days requires lead counsel to submit a letter to the district judge's courtroom deputy requesting that a case not be calendared during the period of absence. Only lead counsel, as specified on the preliminary statement and scheduling order, need petition the court for leave of absence. A leave of absence does not extend previously set filing deadlines nor relieve counsel from other deadline requirements imposed by the court.

**(4) Responsibilities of Party Upon Removal of Attorney.** Whenever an attorney withdraws or dies or is removed or suspended or for any other reason ceases to act as attorney of record, the party whom the attorney was representing must within twenty-one (21) days or before any further proceedings are had in the action before the court notify the clerk of the appointment of another attorney or of the party's decision to appear *pro se*. The party must also provide the clerk with the current telephone number and address of the newly-appointed attorney or of the party, if proceeding *pro se*. Failure to comply with this rule shall constitute a default by the party.

## **F. Attorney Discipline.**

**(1) Discipline by Other Courts; Criminal Convictions.** Whenever it appears to the court that any member admitted to practice in this court generally under LR 83.1A or specially under LR 83.1B has been suspended or disbarred from the practice of law by the Supreme Court of Georgia or by any other court of competent jurisdiction or has been convicted of a felony or any crime involving moral turpitude in any court, such disbarment, suspension, or conviction shall operate as an automatic suspension of the attorney's right to practice in this court, and an order of suspension shall be issued by the court. An order of disbarment shall be issued thirty (30) days thereafter unless the attorney has by motion to the

court shown good cause as to why the attorney should not be disbarred or that justice requires that disbarment not be imposed.

**(2) Misconduct.** Complaints of professional misconduct, including those referred by judges, shall be submitted to the court in writing and shall state with particularity the circumstances out of which the charges arose. Complaints submitted by counsel are subject to the strictures of Fed.R.Civ.P. 11. All other complaints of professional misconduct, except those submitted by judicial officers of this court, shall be under oath.

Upon receipt of a complaint regarding the professional conduct of an attorney in a proceeding before this court or when a complaint regarding an attorney's conduct in a proceeding in another court comes to the attention of this court, the district judge before whom the case is pending or to whom the alleged misconduct in another court has become known (or, in the district judge's discretion, the court) shall determine whether:

(a) the inquiry should be terminated because the question raised is unsupported or insubstantial;

(b) the alleged professional misconduct justifies further inquiry and, for members of the State Bar of Georgia, the matter should be referred to the State Disciplinary Board of the State Bar of Georgia for investigation and prosecution by that Board, if warranted;

(c) the alleged professional misconduct warrants consideration of prompt disciplinary action by this court regarding the attorney's right to practice before the court, and the matter should be referred to the court's Committee on Discipline for investigation, notwithstanding concurrent reference of the matter to the State Disciplinary Board of the State Bar of Georgia;

(d) the alleged professional misconduct of an attorney not a member of the State Bar of Georgia justifies further inquiry by the court and should be referred to a Committee on Discipline appointed by the court for investigation. Any attorney whose conduct in this court is under investigation by the Committee on Discipline shall not be specially admitted under LR 83.1B for participation in any other cases until the pending investigation is concluded.

Whenever a judge determines that action is appropriate under (b), (c), or (d), above, the court shall provide the attorney whose conduct is the subject of the complaint a copy of the written allegations against the attorney.

Nothing herein contained in this rule shall limit the right of an individual judge to manage the cases assigned to the district judge, which right shall include the authority to impose monetary penalties, to disqualify counsel from participation

in a particular case, and to impose any other penalties or sanctions which may be appropriate in a particular case.

**(3) Right to a Hearing.** Except as provided in subsection (1) above, this court shall not impose any disciplinary action affecting an attorney's right to practice before the court until after a hearing on the matter has been held before the district judge to whom the case was assigned and upon a showing of good cause. The attorney may waive the right to a hearing. In those instances where the charge of misconduct was raised by a judge, the chief judge shall appoint another judge to hear the matter. At the hearing, the attorney whose conduct is the subject of the complaint shall be afforded an opportunity to appear in person and/or by counsel, to present oral and documentary evidence, to compel the attendance of witnesses or the production of documents, to cross-examine witnesses, and to present argument orally or in writing. If not called by the attorney whose conduct is being investigated, the district judge has discretionary authority to call the complaining party to appear at the hearing. This rule shall not apply to sanctions, penalties, or other restrictions imposed by a judge which are applicable only to a particular case pending before the district judge.

**(4) Sanctions.** Discipline by this court may include disbarment, suspension from practice for a definite time, reprimand, or other discipline which the court deems proper. Referral of a complaint to the State Disciplinary Board of the State Bar of Georgia for investigation shall not constitute such discipline as to entitle the attorney to a hearing in this court on the propriety of the referral.

**(5) Committee on Discipline.** The court shall appoint a Committee on Discipline composed of five (5) members selected by the court from the Bar Council for the Northern District of Georgia. No committee member shall serve for more than three (3) years. The committee shall at all times have at least two (2) members from divisions other than the Atlanta division.

The committee shall have the power to investigate all charges of professional misconduct referred to it by the court. At the request of the committee, the clerk shall issue subpoenas and subpoenas *duces tecum* as may be required by the investigation.

The committee shall at the close of the investigation make a written report to the court stating the discipline or other action recommended by the committee. All disciplinary proceedings shall be in-camera unless the court shall direct otherwise. A copy of the rules governing the committee's procedures is attached as Appendix G.

**(6) Contempt of Court.** Disciplinary proceedings under this Rule shall not affect or be affected by any proceeding for contempt under Title 18 of the United States Code or under Fed.R.Crim.P. 42.

**(7) Unauthorized Practice.** Any person who before admission to the bar of this court or who while disbarred or suspended from the bar of this court exercises any of the privileges bestowed upon members of this bar or who pretends to be entitled to such privileges shall be guilty of contempt of this court and shall be subject to punishment there for and shall be subject to any other discipline which the court may impose.

**(8) Reinstatement.** Persons disbarred from practice before this court may not petition for reinstatement within three (3) years following disbarment or within two (2) years following an adverse decision upon a previous petition for reinstatement. Persons suspended indefinitely must satisfy all conditions to reinstatement imposed by the court at the time of suspension.

## **LR 83.2 TRIAL RELATED LOCAL RULES**

### **A. Taxation of Costs in Late-Settling Cases.**

Refer to LR 39.2

### **B. Attorneys at Trial.**

Refer to LR 39.3

## **LR 83.3 PETITIONS TO STAY EXECUTION OF STATE COURT JUDGMENTS; HABEAS CORPUS PETITIONS**

**A. Procedure for Petitioning to Stay.** A petitioner seeking a stay of enforcement of a state court judgment or order shall attach to the petition a copy of all state court opinions and judgments relating to the matter. The petitioner shall also state whether or not petitioner has previously petitioned this court or any other federal court for relief arising out of this same matter. The reasons for denying relief given by a court that has considered the matter shall be attached to the petition. If the court did not issue a written order stating its reasons for denying relief, a copy of all relevant portions of the transcript shall be attached to the petition. If petitioner raises an issue which was either not raised or not fully exhausted in state court, petitioner shall state the reasons why such action was not taken.

**B. Successive Petitions.** A second or successive petition for habeas corpus may be dismissed if the court finds:

- (1) that the petition fails to allege new or different grounds for relief, or
- (2) that the failure of the petitioner to assert those grounds in a prior petition constitutes an abuse of the writ, or
- (3) that the petition is frivolous and entirely without merit.

Second or successive petitions not dismissed on one of the above-stated grounds shall be given expedited consideration by the court.

## **LR 83.4 RESTRICTIONS ON MEDIA AND RELEASE OF INFORMATION**

### **A. Television and Radio Broadcasting, Tape Recording, or Photographing Judicial Proceedings.**

The taking of photographs and operation of tape recorders in the courthouse and radio or television broadcasting from the courthouse during the progress of or in connection with judicial proceedings, including proceedings before a United States Magistrate Judge, whether or not court is actually in session, is prohibited. A judicial officer may, however, permit (1) the use of electronic or photographic means for the presentation of evidence or the perpetuation of a record, and (2) the broadcasting, televising, recording, or photographing of investiture, ceremonial, or naturalization proceedings.

Cameras and/or any electronic devices equipped with cameras, including cellular telephones, personal digital assistants and laptop computers, will not be allowed into the courthouses of this district except by court order or by direct escort and supervision of an employee of a federal agency whose offices are located therein.

To facilitate the enforcement of this rule, no photographic, broadcasting, sound or recording equipment other than the recording equipment of the United States magistrate judges and the official court reporters, will be permitted to be operated on the floors of the courthouse occupied by the court, except as otherwise permitted by order of the judicial officer before whom the particular case or proceeding is pending.

Portable computers, cellular telephones, pagers and personal communication devices without cameras may be transported onto floors occupied by the court; however, these devices shall not be operated in any courtroom or hearing room nor shall they be operated in any public area where their operation is disruptive of any court proceeding unless otherwise permitted by order of the court.

All electronic photographic, broadcasting, sound or recording equipment brought into the courthouses shall be subject to inspection by the United States Marshals' Service.

### **B. Provisions for Special Orders in Widely Publicized or Sensational Civil Cases.**

In a widely publicized or sensational civil case, the court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the parties or the rights of the accused to a fair trial by an impartial jury; the seating and conduct in the courtroom of spectators and news media representatives; the management and sequestration of jurors and witnesses; and

any other matters which the court may deem appropriate for inclusion in such an order.

## **LR 83.5 WEAPONS NOT ALLOWED IN COURTHOUSE**

**A. Weapons Not Allowed.** Firearms or other weapons shall not be worn or brought into the courtrooms of this court or into the buildings in which they are located, except with the specific authorization of the court. The court has excused, to the extent hereinafter stated, the following persons or groups from this rule:

(1) The United States Marshal and his duly assigned deputy marshals, court security officers and other security personnel engaged by the U.S. Marshal.

(2) Federal Protective Service officers on assignment or upon call.

(3) Any federal law enforcement officer presenting a prisoner before a magistrate judge for initial appearance.

(4) Other federal law enforcement officials whose permanent assignment offices are located within the security parameters of the various courthouses; provided, however, that this exclusion does not allow these officials to carry weapons to the facilities of the United States District Court, including, but not limited to judges' chambers, offices and courtrooms.

(5) United States Probation Officers are authorized to wear or carry firearms to and from their offices within the district's courthouses, but probation officers are not authorized to wear firearms inside their offices. Firearms brought to the probation office will be secured in a locked container.

(6) Other officers as designated by court order.

**B. Checking of Weapons.** Firearms and weapons must be checked with security personnel. If no security officer is on duty or locatable, weapons should be checked with either the clerk or the United States Marshal.

**C. Sanction for Noncompliance.** Any person or law enforcement officer who fails to comply with this rule shall be guilty of contempt and shall be subject to the appropriate disciplinary action.

## **LR 83.6 CERTIFICATE OF INTERESTED PERSONS**

Refer to LR 3.3

## **LR 83.7 BANKRUPTCY JUDGES**

**A. Delegated Jurisdiction.** Bankruptcy judges are judicial officers of this court serving in the unit of this court known as the United States Bankruptcy Court for the Northern District of Georgia. Each bankruptcy judge shall perform the duties



set forth and may exercise the authority conferred in Section 104 of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333 (July 11, 1984) (to be codified as 28 U.S.C. §§ 151-58) with respect to any action, suit, or proceeding and may preside alone and hold a regular or special session of the bankruptcy court, except as otherwise provided by law or by rule or order of this court.

**B. Jury Trials in Bankruptcy Court.** In accordance with 28 U.S.C. § 157(e), the bankruptcy judges of this court are specially designated to conduct jury trials where the right to a jury trial applies. This jurisdiction is subject to the express consent of all parties pursuant to the procedure set forth in BLR 9015-2, NDGa.

### **LR 83.8 TRUTH-IN-LENDING ACTIONS**

**A. Referral to Magistrate Judges.** Actions brought by individual plaintiffs under the Truth-in-Lending Statute seeking relief under 15 U.S.C. § 1635, 15 U.S.C. § 1640, or both shall be automatically referred to the magistrate judges of this court once the answer and counterclaims have been filed. Additional information regarding these actions is set forth in LR 72.1D.

### **LR 83.9 ADMINISTRATIVE APPEALS**

**A. Social Security Actions.** Actions brought under Section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), and related statutes to review administrative determinations shall be automatically referred to the magistrate judges of this court once issue has been joined. In all actions brought under 42 U.S.C. § 405(g), the government shall automatically be granted an additional forty (40) days in which to answer, for a total response time of one hundred (100) days.

**B. Other Administrative Appeals.** The magistrate judges are authorized to review the administrative awards of licenses and similar privileges and civil service cases involving matters such as adverse action, retirement questions, and reductions in force.

### **LR 83.11 INTERNAL REVENUE ACTIONS**

**A. Review of Jeopardy Assessments.** All actions arising under 26 U.S.C. § 7429 shall bear the designation "Review of Jeopardy Assessments" on the complaint next to the style of the case. Upon filing such an action, the filing attorney shall immediately present a motion for rule nisi to the judge to whom the action has been assigned in order that the action might be promptly brought to the judge's attention. Failure to comply with this rule may result in dismissal of the action.

**B. Enforcement of Internal Revenue Summonses.** Petitions for the enforcement of Internal Revenue Summonses shall be heard by the magistrate judges. Refer to LR 72.1D for additional information.

**C. Enforcement of Internal Revenue Laws.** The magistrate judges are authorized to issue orders, warrants, or other necessary or appropriate processes for the enforcement of the Internal Revenue laws. Refer to LR 64.1 for additional information.

## **LR 84: FORMS**

### **LR 84.1 Appendix B: Documents Associated With Civil Cases (Appendix B)**

- A.** Plaintiff's Initial Disclosures (App. B, Form I.A.)
- B.** Defendant's Initial Disclosures (App. B, Form I.B.)
- C.** Joint Preliminary Report and Discovery Plan (App. B, Form II)
- D.** Pretrial Order (App. B, Form III)

# **CRIMINAL LOCAL RULES**

## **I. SCOPE, PURPOSE AND CONSTRUCTION**

### **LCrR 1: SCOPE**

#### **LCrR 1.1 SCOPE OF THE RULES**

**A. Title and Citation.** These rules shall be known as the Local Criminal Rules of the United States District Court for the Northern District of Georgia. They may be cited as "LCrR \_\_, NDGa."

**B. Effective Date.** These rules apply to all cases and proceedings pending on or commenced after April 15, 1997 unless the judge or magistrate judge to whom the case has been assigned has ruled that their application in a case pending on April 15, 1997 was not feasible or would work an injustice.

**C. Scope of Rules.** These rules shall apply in all proceedings in criminal actions. Civil local rules shall apply insofar as they do not conflict with any statute, federal rule, local criminal rule, or individual order.

**D. Rule of Construction and Definitions.**

(1) United States Code, Title 1, Sections 1 to 5, shall, as far as applicable, govern the construction of these rules.

(2) The following definitions shall apply.

(a) The word "court" refers to the United States District Court for the Northern District of Georgia and not to any particular judge or magistrate judge of the court.

(b) The word "judge" refers to any United States District Judge exercising jurisdiction with respect to a particular action or proceeding in this court.

(c) The word "magistrate judge" refers to any full-time or part-time United States Magistrate Judge exercising jurisdiction under 28 U.S.C. Section 636, consistent with the policies adopted by this court.

(d) The word "clerk" refers to the District Court Clerk and deputy clerks.

## **II. PRELIMINARY PROCEEDINGS**

**(RESERVED)**

### **III. INDICTMENT AND INFORMATION**

#### **LCrR 6: THE GRAND JURY**

##### **LCrR 6.1: SELECTION OF JURORS; FREQUENCY; SESSIONAL PROCEDURES; PROCEEDINGS UNDER SEAL.**

###### **A. Selection of Jurors.**

**(1) Statutory Qualification.** Refer to LR 47.1.

**(2) Drawing.** Grand juries shall function on a district wide basis. The court, or the clerk if so ordered by the court, shall draw at random a pro rata or approximately pro rata number of names from the qualified jury wheel for each division within the district. The names so drawn shall be pooled and shall constitute the grand jurors to report to duty. Unless otherwise ordered, the grand jury shall be drawn at least forty (40) days before the first day of service of such grand jury.

**(3) Service of Summons.** The Jury Section of the clerk's office shall serve by first class mail a summons on each grand juror at least four (4) weeks prior to the first day of service of the grand jury.

###### **B. Procedures While Grand Jury in Session.**

While the grand jury is in session, no one except government attorneys, the grand jury clerk, attorneys representing witnesses, witnesses, grand jurors, court reporters, interpreters, deputy United States Marshals, law enforcement officers, and other authorized court or Justice Department personnel shall be allowed into the grand jury area of the courthouse, which shall include the reception area, witness room, grand jury rooms, and any other space which the grand jury may be using.

The grand jury clerk, the United States Attorney's office witness clerk(s), government attorneys, and the United States Marshals shall be allowed to remain in the grand jury reception area during the course of grand jury proceedings. Witnesses and attorneys for witnesses shall remain in the witness room, except for checking in with the witness clerk(s). Witnesses and their attorneys shall be permitted to leave the grand jury area to consult, if necessary.

When a grand jury is in session, a deputy United States Marshal shall be on duty in or near the grand jury area to enforce this rule.

### **IV. ARRAIGNMENT AND PREPARATION FOR TRIAL**

#### **LCrR 10: ARRAIGNMENT**

## **LCrR 10.1 ARRAIGNMENTS.**

**A. Generally.** All defendants shall be arraigned before a magistrate judge. The magistrate judge shall then assign the case to a judge in accordance with the procedures established by this court. The duty judge shall conduct any preliminary criminal proceedings that arise which cannot be determined by a magistrate judge.

**B. Scheduling Arraignments.** Immediately after the filing of an indictment or information or the arrest of a defendant, whichever occurs last, the United States Attorney shall request the magistrate judge to schedule the case for arraignment. The United States Attorney shall provide the magistrate judge a copy of the indictment or information and shall inform the magistrate judge as to whether the defendant is in custody and, if so, where. The United States Attorney shall also provide the magistrate judge with the name and address of the defendant, the defendant's surety and attorney, and the name of the assistant United States Attorney in charge of the case. The United States Attorney shall also provide any other information pertinent to the assignment of arraignments, such as whether the indictment or information is a superseding indictment or information or whether there is a related or companion case.

All arraignments shall be scheduled in accordance with the requirements of the Speedy Trial Act of 1974, 18 U.S.C. §§ 3161-74, and in accordance with the "Plan for Achieving Prompt Disposition of Criminal Cases" which is attached as Appendix C and which is hereby incorporated by reference into these rules.

**C. Recording Arraignments.** The arraignment proceedings before the magistrate judge shall be taken down by a court reporter or recorded by other suitable means and shall be preserved in the same manner as arraignments before a judge.

## **LCrR 11: PLEAS**

### **LCrR 11.1 ACCEPTANCE OF PLEAS.**

**A. Pleas of Guilty.** The magistrate judge shall have no power to accept a plea of guilty, but the magistrate judge may inquire into the voluntariness of such a plea and its underlying factual basis as required by Fed.R.Crim.P. 11. In making such inquiry, the magistrate judge shall use a form for the tender of guilty pleas approved by the judges. The magistrate judge shall then assign the case to a judge. If the plea meets the requirements of Rule 11 and if the magistrate judge is so authorized by the judge, the magistrate judge may request the defendant to consent in writing to a presentence investigation before plea of guilty and to examination of the presentence report by the court prior to the time the defendant pleads guilty.

If the inquiry into the defendant's plea of guilty is not conducted by the magistrate judge, the judge shall conduct the inquiry at arraignment. In every case where a defendant pleads guilty, the final determination that the defendant's plea is voluntary shall be made by the judge.

The Probation Department shall, at the direction of the magistrate judge or judge, as appropriate, conduct the presentence investigation.

**B. Pleas of *Nolo Contendere*.** The magistrate judge shall have no power to accept a plea of *nolo contendere*. Any tender of a plea of *nolo contendere* shall be filed with the clerk at arraignment, unless tender at a later time has been expressly approved by the court. The United States shall have seven (7) days to respond. Copies of the tender and the response shall be served on opposing counsel. The government's response and the defendant's statement in support of the *nolo* plea shall be submitted directly to the judge to whom the plea is assigned and shall not be filed with the clerk as they are not part of the permanent criminal case.

The court shall notify the parties of its acceptance or refusal of the *nolo* plea no later than fourteen (14) days before trial. Subsequent to the ruling by the court, the tender of plea form shall be returned to the clerk's office to become part of the permanent file. The statement of the defendant and the response of the government shall become part of the defendant's probation record and shall be included in the file with the presentence report.

**C. Pleas of Not Guilty.** The magistrate judge shall be authorized to accept a plea of not guilty or to direct the entry of such a plea. Upon accepting the plea, the magistrate judge shall assign the case to a judge.

## **LCrR 12: PLEADINGS AND MOTIONS BEFORE TRIAL; DEFENSES AND OBJECTIONS**

### **LCrR 12.1 PHYSICAL REQUIREMENTS FOR DOCUMENTS AND MOTION PRACTICE**

**A. Physical Requirements.** Motions and other documents in criminal proceedings, including attachments thereto, should be submitted in writing and are subject to the format and filing requirements set forth in LRs 5.1, 5.2, 10.1, 11.1 and 15.1.

**B. Filing of Motions and Responses; Hearings.** Motions filed in criminal proceedings shall be filed with the clerk within fourteen (14) days after arraignment. A magistrate judge may for good cause extend the filing time for one fourteen (14)-day period. Motions requesting additional extensions of time must be presented to the judge to whom the case is assigned. To avoid waiver, pretrial matters must be raised within the time limits set forth in this rule. See Fed.R.Crim.P. 12(f). A party's failure to file a response to a motion within fourteen

(14) days after being directed by the court to do so shall indicate that the responding party has no opposition to the motion. All provisions of LR 7.1, filing of Motions and Responses: Hearings, except 7.1A(2) and 7.1B, are fully applicable to motions filed in criminal proceedings. In multiple defendant cases, defense counsel shall serve other defense counsel and *pro se* defendants with copies of the motions filed.

**C. Motion to Adopt Co-Defendant's Motions.** A defendant moving to adopt a co-defendant's motion or motions, including pretrial motions, must attach a copy of each motion to be adopted to defendant's motion to adopt. The defendant's motion must also state:

- (1) The style and action number of the co-defendant's case;
- (2) The title(s) of the specific motion(s) being adopted and the date on which the motion(s) was (were) filed; and
- (3) A statement regarding the defendant's standing to adopt the codefendant's motion(s).

The defendant shall not be required to file a memorandum of law citing supporting authorities (see generally LR 7.1A) in support of defendant's motion to adopt. Separate motions are required if motions of more than one (1) codefendant are being adopted. Defense counsel shall provide all other defense counsel with a copy of defendant's Motion(s) to Adopt Co-Defendant's Motions, but it shall not be necessary to attach a copy of each motion being adopted.

**D. Duty to Confer.** Counsel for the moving party, or the moving party if the party is not represented by counsel, is required to confer with opposing counsel prior to the pretrial conference in a good faith effort to resolve by agreement between them all motions that were filed.

#### **E. Determination of Motions**

(1) **Atlanta Division Cases.** All motions in criminal actions in the Atlanta Division shall be initially submitted to a magistrate judge who shall conduct any required or necessary hearings. When permitted by law, the magistrate judge shall issue a ruling thereon. When the magistrate judge is not authorized to rule on the matter, the magistrate judge shall submit a report and recommendation to the judge to whom the case is assigned.

(2) **Other Division Cases.** Any motion in a criminal action pending in the Gainesville, Newnan, or Rome Divisions may be assigned by the judge for the division to a magistrate judge for any required or necessary hearing, ruling, report, and recommendation. When such an assignment is made, the magistrate judge shall proceed in accordance with the provisions of subsection (1).

### **LCrR 16: DISCOVERY AND INSPECTION**

## **LCrR 16.1 PRETRIAL DISCOVERY AND INSPECTION**

The government shall make available to the defendant at the time of arraignment for inspection and copying all materials or copies of materials requested by the defendant which are discoverable under Fed.R.Crim.P. 16. The government shall also provide the defendant at arraignment with an inventory of all items seized from the defendant by law enforcement officials which the government expects to introduce at trial. Unless otherwise ordered by the court, the defendant shall be required to make discoverable materials requested by the government available for inspection and copying no later than twenty-one (21) days prior to trial. The failure of any party to produce requested discoverable evidence in a timely manner may result in the evidence being ruled inadmissible at trial.

While extensions of time shall not be routinely granted, the magistrate judge may for good cause shown grant a party additional time in which to produce requested evidence. Motions for extensions of time must contain a schedule upon which the requested discoverable evidence will be available. If a party requests discoverable evidence which is not at that time in the possession of the custodial party, such as medical reports, results of tests which have been performed, etc., the custodial party must inform the court of the earliest date on which such materials can be in the party's possession for inspection and copying by the requesting party.

Unless otherwise ordered by the court, a party shall have no obligation to reproduce copies of requested materials (except the government must provide the defendant a copy of the defendant's prior criminal record) for another party's possession until the requesting party has remitted payment for the duplicating expenses. Defendants represented under this court's Criminal Justice Plan are exempted from this requirement to pay duplicating expenses. Whenever duplication of the requested materials is unduly burdensome for a party, the party may by motion at the appropriate time request the court to relieve the party from the duty to provide copies.

## **LCrR 17: PRETRIAL CONFERENCE**

### **LCrR 17.1 PRETRIAL CONFERENCES**

#### **A. Scheduling.**

(1) For Atlanta division cases in which a not guilty plea is entered at arraignment, the magistrate judge shall schedule and hold a pretrial conference within fourteen (14) days of the arraignment or at such later date as may be required.



(2) In other division cases in which a not guilty plea is entered at arraignment, the judge assigned to the division may upon the judge's own motion or upon motion of any party assign the case to a magistrate judge for a pretrial conference.

**B. Hearing.** The pretrial conference shall be attended by counsel who will actually try the case. The following matters may be presented to the magistrate judge at the pretrial conference for consideration, hearing, and ruling or report and recommendation:

- (1) Motions relating to discovery and inspection and for bills of particular.
- (2) Motions to dismiss the indictment.
- (3) Motions to suppress evidence.
- (4) Any other matters which may serve the interests of justice and the prompt and orderly disposition of the case.

Counsel shall have the duty to make every effort to stipulate all facts and/or points of law as to which the truthfulness or existence of the fact or law is not contested.

**C. Orders.** Pretrial hearings shall be recorded. At the conclusion of the final pretrial conference, a pretrial order shall be prepared and filed with the court.

## **V. VENUE**

### **LCrR 18: PLACE OF PROSECUTION AND TRIAL**

#### **LCrR 18.1 VENUE AND TRIAL OF CRIMINAL CASES**

**A. Filing.** Criminal cases shall be filed with the clerk in the division in which venue lies (see Fed.R.Crim.P. 18). See also LR 3.1A.

**B. Trial.** A defendant in a criminal action will ordinarily be tried in the division in which the offense is alleged to have been committed.

**C. Proceedings in Other Divisions.** When the arraignment, trial, sentencing, or other proceedings in a criminal case are held in a division of the district other than the division in which the indictment or information is or was pending, upon completion of the proceedings, all papers and records therein shall be returned to and shall appear on the records of the division in which the indictment or information is or was pending as if such proceedings had been held in that division.

## **VI. TRIAL**

### **LCrR 24: TRIAL JURORS**

## **LCrR 24.1 JUROR SELECTION**

Prospective grand and petit jurors shall be selected and qualified and jury panels shall be drawn pursuant to the Jury Selection and Service Act of 1968, 28 U.S.C. §§ 1861-70, and the current Jury Plan of this court. The Jury Plan of this court is attached hereto as Appendix A and is made a part of these rules.

## **LCrR 26 TAKING OF TESTIMONY**

### **LCrR 26.1 EXCUSAL OF WITNESSES**

Witnesses shall be excused from criminal proceedings and trials in accordance with the procedures set forth in LR 43.2.

## **LCrR 30: INSTRUCTIONS**

### **LCrR 30.1 REQUESTS TO CHARGE**

Requests to charge in criminal trials are subject to all the provisions of LR 51.1, except the requirement in LR 51.1B that the parties attach their contentions to the requests to charge submitted.

## **VII. JUDGMENT**

### **LCrR 32: SENTENCE AND JUDGMENT**

#### **LCrR 32.1 PRESENTENCE REPORT**

**A. Non-Disclosure of Presentence Investigation Report.** Pursuant to Fed.R.Crim.P. 32(b)(6)(A), the probation officer's sentencing recommendation, if any, provided to the court with the presentence report, will not be disclosed to the defendant, defendant's counsel, or to the attorney for the government.

**B. Confidentiality.** Any copy of a presentence report which this court makes available, or has made available, to the United States Parole Commission or to the Bureau of Prisons constitutes a confidential court document and shall be presumed to remain under the continuing control of the court during the time it is in the temporary custody of these agencies. A copy of the presentence report shall be loaned to the Parole Commission and Bureau of Prisons only for the purpose of

enabling those agencies to carry out their official functions, including parole release and supervision. The presentence report shall be returned to the court after such use or upon request. Disclosure of the report is authorized only so far as necessary to comply with 18 U.S.C. § 4208(b)(2).

**C. Confidentiality Legend.** Every copy of a presentence report released by the probation officer of this court to the Parole Commission or Bureau of Prisons shall bear the following legend on its face:

**CONFIDENTIAL  
PROPERTY OF U.S. COURTS  
SUBMITTED FOR OFFICIAL USE OF  
U.S. PAROLE COMMISSION AND  
FEDERAL BUREAU OF PRISONS. TO BE  
RETURNED AFTER SUCH USE, OR UPON REQUEST.  
DISCLOSURE AUTHORIZED ONLY TO  
COMPLY WITH 18 U.S.C. § 4208(b)(2).**

## **VIII. APPEAL**

**(RESERVED)**

## **IX. SUPPLEMENTARY AND SPECIAL PROCEEDINGS**

**(RESERVED)**

## **X. GENERAL PROVISIONS**

### **LCrR 44: RIGHT TO AND ASSIGNMENT OF COUNSEL**

#### **LCrR 44.1 APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS**

Pursuant to Fed.R.Crim.P. 44, counsel shall be appointed to represent any indigent defendant. The procedures for the appointment of counsel and counsel's obligations regarding the representation of the indigent defendant are set forth in the "Plan of the United States District Court for the Northern District of Georgia

Pursuant to the Criminal Justice Act of 1964" which is attached as Appendix D and which is hereby incorporated by reference into these rules.

## **LCrR 44.2 APPEARANCE OF APPOINTED COUNSEL**

Appointments under this court's Criminal Justice Plan (Appendix D) as attorney of record for a defendant are made in writing on form CJA-20, "Appointment of and Authority to Pay Court Appointed Counsel". No further action is necessary by appointed counsel in order to notice an appearance on behalf of the defendant.

## **LCrR 46: RELEASE FROM CUSTODY**

### **LCrR 46.1 BAIL, PROCEDURES RELATING TO BONDS BEFORE TRIAL OR SENTENCING**

**A. Appearance Bonds.** Whenever a judge or magistrate judge of this court requires a person arrested for a bailable offense or upon superseding indictment or a person who is a material witness to give bail for the individual's appearance before the court, the appearance bond given by such person shall be in the amount set by the judge or magistrate judge and shall be secured in conformance with Fed.R.Crim.P. 46(d) and the Bail Reform Act, 18 U.S.C. §§ 3141(a)-3142, 3144.

#### **B. Forfeiture of Fugitive Defendants' Bonds.**

**(1) Prior to Arraignment.** When a defendant previously released on bond fails to appear for arraignment, the United States Attorney shall prepare a motion for forfeiture of bail, issuance of a bench warrant, or other appropriate order which shall be presented to the judge to whom the case was assigned or to the duty judge if no assignment had been made.

**(2) Subsequent to Arraignment.** When an arraigned defendant previously released on bond fails to appear for trial or sentencing, the United States Attorney shall proceed in accordance with the procedure set forth in subsection (1).

### **LCrR 46.2 PROCEDURES RELATING TO BONDS PENDING EXECUTION OF SENTENCE AND BONDS PENDING APPEAL**

**A. Setting of Bond.** When execution of a defendant's sentence is delayed or when an appeal of a defendant's conviction is pending, bond shall be set in accordance with the provisions of the Bail Reform Act, 18 U.S.C. §§ 3141(b), 3143. If a new bond is set, the defendant shall be presented to a magistrate judge for approval of surety.

## **B. Remittiturs.**

**(1) Judgment Affirmed or Appeal Dismissed.** When a judgment of conviction in a criminal case has been affirmed on appeal or the appeal dismissed, the clerk shall immediately upon receipt file the remittitur from the appellate court. The clerk shall also send certified copies of the remittiturs, judgment, and commitment to the United States Marshal for this district and notify counsel of record and/or the parties that the remittitur has been filed.

**(2) Judgment Modified, Vacated, or Reversed.** When the judgment of this court has been modified, vacated, or reversed on appeal, the clerk shall immediately present a proposed order to the court making the remittitur the judgment of this court and shall notify counsel and/or the parties of the entry of said order and that they are required to prepare and present promptly to the court any such further orders as may be required.

**(3) 28 U.S.C. § 2255 Petitions.** Upon receipt of a remittitur from the appellate court either denying or granting a defendant's petition under 28 U.S.C. § 2255, the clerk shall immediately file the remittitur and follow the appropriate procedure set forth in (1) or (2) above.

## **C. Revocation of Appeal Bond.**

When a convicted defendant is released on an appeal bond and the judgment of conviction is either affirmed or the appeal dismissed by the appellate court, the clerk shall immediately file the remittitur or notice of dismissal of appeal and shall promptly notify defendant, counsel for the defendant, and the sureties of the defendant's bonds of such affirmance or dismissal by registered or certified mail to their last known address. The clerk shall also mail a copy of such notice to the United States Attorney, the United States Marshal, and the United States Probation Officer, if appropriate.

The notice shall direct the defendant to report to the United States Marshal in Atlanta, Georgia, at a time certain on the tenth (10th) day following the date of the notice in order that the defendant may be committed into custody to abide the sentence imposed. When the tenth (10th) day falls on Saturday or Sunday, the date of the following Monday shall be used. When the tenth (10th) day falls on a holiday, the date of the following day shall be used.

When the commitment order specifies that the defendant is allowed to surrender voluntarily, the notice shall direct the defendant to report to the designated institution upon notification by the United States Marshal.

Upon failure of the defendant to report as directed, the United States Marshal shall report the failure to the United States Attorney, and the bond of the defendant shall become subject to forfeiture without further notice.

## **D. Revocation of Bond upon Denial of 28 U.S.C. § 2255 Petition.**

Defendants released on bond whose 28 U.S.C. § 2255 petitions are denied by the appellate court are subject to the provisions of LCrR 46.2A.

## **LCrR 47: JUROR CONTACT**

### **LCrR 47.3 RESTRICTED CONTACT WITH JURORS**

During trial or after the conclusion of a trial, no party, agent or attorney shall communicate with any members of the petit jury, including alternate or excused jurors, before which the case was tried without first receiving permission of the court.

## **LCrR 48: DISMISSAL**

### **LCrR 48.1 PROCEDURE UPON ABANDONMENT OF PROSECUTION**

When the government abandons prosecution of a defendant being held for trial in this district, the appropriate official shall immediately notify the clerk and U.S. Marshal for this court, in writing, that prosecution has been abandoned.

## **LCrR 50: CALENDARS; PLAN FOR PROMPT DISPOSITION**

### **LCrR 50.1 CRIMINAL CALENDARS**

The criminal calendars of this court shall be processed in accordance with the Speedy Trial Act of 1974, 18 U.S.C. §§ 3161-74, and in accordance with the "Plan for Achieving Prompt Disposition of Criminal Cases" (Appendix C), provided, however, that the Speedy Trial Act shall supersede any conflicting provisions contained within the "Plan".

## **LCrR 53: REGULATION OF CONDUCT IN THE COURTROOM**

### **LCrR 53.1 TELEVISION AND RADIO BROADCASTING, TAPE RECORDING, OR PHOTOGRAPHING JUDICIAL PROCEEDINGS**

Refer to LR 83.4

## **LCrR 55: RECORDS**

### **LCrR 55.1 PROCEDURES REGARDING PLEADINGS AND EXHIBITS**

Procedures regarding the removal of pleadings and the filing, inspection, and return of trial exhibits are set forth in LR 79.1E.

## **LCrR 57: RULES BY DISTRICT COURTS**

### **LCrR 57.1 ATTORNEYS: ADMISSION TO PRACTICE BEFORE THE COURT**

#### **A. Admission to the Bar of this Court.**

Refer to LR 83.1A

#### **B. Permission to Practice in a Particular Case.**

Refer to LR 83.1B

#### **C. Standard of Professional Conduct.**

Refer to LR 83.1C

#### **D. Appearances.**

##### **(1) In Criminal Cases.**

(a) Appointments under this Court's Criminal Justice Plan (Appendix D) as attorney of record for a defendant are made in writing on Form CJA-20, "Appointment of and Authority to Pay Court Appointed Counsel". No further action is necessary by appointed counsel in order to notice an appearance on behalf of defendant.

(b) Retained defense counsel are required to file a notice of appearance within three (3) days after being retained. Counsel becoming associated with counsel of record or being substituted for counsel of record must also comply with this requirement.

This court will follow the provisions of the Eleventh Circuit Plan under the Criminal Justice Act, Section (d)(2) regarding requests by retained defense counsel to withdraw from representation of a defendant on appeal. See also LCrR 57.1E.

**(2) Before the Grand Jury.** An attorney representing a witness before the grand jury must file a notice of appearance with the clerk. The notice shall be filed in such a manner as to maintain the secrecy requirements of grand jury proceedings.

For purposes of this rule, an attorney shall be deemed to be appearing for and representing a witness before the grand jury if the attorney is present within the courthouse and advising the witness prior to entering the chambers of the grand jury or is interviewing witnesses before or after their appearance before the grand jury.

**(3) *Pro Se* Appearance Limitations.** Whenever a party has appeared by attorney, the party may not thereafter appear or act in the party's own behalf in the action or proceeding or take any step therein unless the party has first given notice of the party's intention to the attorney of record and to the opposing party and has obtained an order of substitution from the court. Notwithstanding this rule, the court may in its discretion hear a party in open court even though the party has previously appeared or is represented by attorney.

**(4) Duty to Supplement.** Counsel and parties appearing *pro se* shall have, in all cases, an affirmative duty to notify the clerk's office by letter of any change in address and/or telephone number. A failure to keep the clerk's office so informed which causes a delay or otherwise adversely affects the management of a civil case shall constitute grounds for dismissal without prejudice or entry of a judgment by default.

#### **E. Withdrawal; Leave of Absence; Responsibilities of Party Upon Removal of Attorney**

**(1) Withdrawal Policy.** Counsel will not ordinarily be allowed to withdraw after pretrial or at a time when withdrawal will cause a delay in the trial of the case.

**(2) Motions to Withdraw.** This policy notwithstanding, an attorney wishing to withdraw the attorney's appearance in any action or proceeding or wishing to have the attorney's name stricken as attorney of record for a party in any case shall comply with the following procedure:

(a) Submit to the clerk in duplicate for filing a motion requesting permission to withdraw.

(b) The motion shall state that the attorney has given the client fourteen (14) days prior notice of the attorney's intention to request permission to withdraw and shall specify the manner of such notice. A copy of the notice shall be affixed to the motion.

(c) The attorney shall serve a copy of the attorney's motion to withdraw upon opposing counsel and upon the client after filing the motion with the clerk.

(d) Fourteen (14) days after filing, the clerk shall submit the motion to the judge for action thereon.

**(3) Withdrawal from Criminal Appeals.** If, prior to filing a notice of appeal, a retained attorney of record for the defendant moves to withdraw from representation of the defendant on direct appeal of the defendant's conviction and the defendant moves to proceed on appeal *in forma pauperis* and/or for the appointment of Criminal Justice Act appellate counsel, retained counsel will be required to disclose in camera:

(a) The total amount of fees and costs paid.



(b) By whom the fees and costs were paid.

(c) The total amount of costs actually incurred and services actually rendered.

This information along with any other information required by case law decided subsequently to the enactment of this local rule will be viewed in camera by the court for the purpose of deciding the defendant's *in forma pauperis* motion.

**(4) Leaves of Absence.** All leaves of absence shall be subject to the approval of the court. Petitions for leave of absence for periods greater than twenty (20) days in length must be made by motion. Lead counsel must file a petition, in each individual case where an absence is requested, designating the period of absence and the reason for the absence. A proposed order for the court shall also be attached. Absence of less than twenty-one (21) days requires lead counsel to submit a letter to the judge's courtroom deputy requesting that a case not be calendared during the period of absence. Only lead counsel, as specified on the preliminary report and discovery schedule, need petition the court for leave of absence. A leave of absence does not extend previously set filing deadlines nor relieve counsel from other deadline requirements imposed by the court.

**(5) Responsibilities of Party Upon Removal of Attorney.** Whenever an attorney withdraws or dies or is removed or suspended or for any other reason ceases to act as attorney of record, the party whom the attorney was representing must within twenty-one (21) days or before any further proceedings are had in the action before the court notify the clerk of the appointment of another attorney or of the party's decision to appear *pro se*. The party must also provide the clerk with the current telephone number and address of the newly-appointed attorney or of the party if proceeding *pro se*. Failure to comply with this rule shall constitute a default by the party.

**F. Attorney Discipline.**

Refer to LR 83.1F

**LCrR 57.2 PRESENCE OF COUNSEL AND COUNSEL PARTICIPATION AT TRIAL**

The requirements, procedures, and presumptions set forth in LR 39.3 respectively, regarding the presence of counsel during trial and limitations on counsel participation at trial are fully applicable to criminal proceedings and trials in this court.

**LCrR 57.3 WEAPONS NOT ALLOWED IN COURTHOUSE**

## **LCrR 57.4 RELEASE OF INFORMATION IN CRIMINAL AND GRAND JURY PROCEEDINGS**

### **A. By Lawyers or Law Firms.**

(1) In connection with pending or imminent criminal litigation with which a lawyer or a law firm is associated, it is the duty of the lawyer or law firm not to release or authorize the release of information or opinion which a reasonable person would expect to be disseminated by any means of public communication, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

(2) With respect to a grand jury or other pending investigation of any criminal matter, a lawyer participating in or associated with the investigation shall refrain from making any extrajudicial statement which a reasonable person would expect to be disseminated by any means of public communication that goes beyond the public record or which is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise to aid in the investigation.

(3) From the time of arrest, issuance of an arrest warrant, or the filing of a complaint, information, or indictment in any criminal matter until the commencement of trial or disposition without trial, a lawyer or law firm associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement which a reasonable person would expect to be disseminated by any means of public communication, relating to that matter and concerning:

(a) The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the accused's name, age, residence, occupation, and family status, and, if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in the apprehension of the accused or to warn the public of any dangers the accused may present;

(b) The existence or contents of any confession, admission, or statement given by the accused or the refusal or failure of the accused to make any statement;

(c) The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;

(d) The identity, testimony, or credibility of prospective witnesses, except that the lawyer or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;

(e) The possibility of a plea of guilty to the offense charged, to a lesser offense, to an offense other than the offense charged, or of *nolo contendere*;

(f) Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

The foregoing shall not be construed to preclude the lawyer or law firm during this period, in the proper discharge of official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons); the identity of the investigating and arresting officer or agency and the length of the investigation; from making an announcement at the time of seizure of any physical evidence, other than a confession, admission, or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges made against him.

(4) During a jury trial of any criminal matter, including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview relating to the trial or the parties or the issues in the trial which a reasonable person would expect to be disseminated by means of public communication, if there is a reasonable likelihood that such dissemination will interfere with a fair trial. A lawyer or law firm is permitted to quote from or refer without comment to public records of the court in the case.

**B. By Courthouse Personnel.** All courthouse supporting personnel, including, among others, marshals, deputy marshals, court clerks, deputy court clerks, bailiffs, court reporters, law clerks, secretaries, and employees or subcontractors retained by the court-appointed official reporters, are prohibited from disclosing to any person, without authorization by the court, information relating to a pending grand jury proceeding or criminal case that is not part of the public records of the court. This rule specifically forbids the divulgence of information concerning arguments and hearings held in chambers or otherwise outside the presence of the public.

**C. Exceptions to This Rule.** Nothing in this rule is intended (1) to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders, (2) to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies, or (3) to preclude any lawyer from replying to charges of misconduct that are publicly made against him.

**D. Provisions for Special Orders in Widely Publicized or Sensational Criminal Cases.** In a widely publicized or sensational criminal case, the court, on motion of either party or on its own motion, may issue a special order governing such matters as extra-judicial statements by parties and witnesses likely to interfere with the rights of the parties or the rights of the accused to a fair trial by an impartial jury; the seating and conduct in the courtroom of spectators and news media representatives; the management and sequestration of jurors and witnesses; and any other matters which the court may deem appropriate for inclusion in such an order.

## **LCrR 57.5 REGISTRY FUNDS AND OTHER FUNDS IN CLERK'S CUSTODY**

Refer to LR 67.1

## **LCrR 58: PROCEDURES FOR MISDEMEANORS AND OTHER PETTY OFFENSES**

### **LCrR 58.1 MISDEMEANOR AND PETTY OFFENSE JURISDICTION AND DUTIES OF MAGISTRATE JUDGES**

(1) Pursuant to 18 U.S.C. § 3401(a) and subject to the provisions regarding consent of the defendant set forth in 18 U.S.C. § 3401(b) and (g), this court has designated jurisdiction to its magistrate judges [as defined, 28 U.S.C. § 639(6)] to conduct trials involving misdemeanors and to sentence persons convicted thereof. See also 28 U.S.C. § 636(a)(3), (4) and (5).

Misdemeanors include Class A misdemeanors [18 U.S.C. § 3559(a)(6)] and petty offenses [18 U.S.C. § 19]. Petty offenses are Class B misdemeanors [18 U.S.C. § 3559(a)(7)], Class C misdemeanors [18 U.S.C. § 3559(a)(8)], and infractions [18 U.S.C. § 3559(a)(9)].

(2) Pursuant to 18 U.S.C. § 3401(c), the court authorizes the magistrate judges to direct the probation service of the court to conduct a presentence report prior to the imposition of sentence by a magistrate judge.

(3) See Appendix E to these Local Rules for the Forfeiture of Collateral Schedule in Misdemeanor and Petty Offenses applicable to offenses committed in this District.

## **LCrR 58.2 COLLATERAL IN LIEU OF APPEARANCE FOR DESIGNATED PETTY OFFENSES**

For petty offenses listed in the "Forfeiture of Collateral Schedule", which is attached to these rules as Appendix E and which is hereby incorporated by reference, collateral may be posted in lieu of the appearance of the offender, unless it is otherwise specified in Appendix E.

## **LCrR 58.3 RULES APPLICABLE TO MISDEMEANORS AND PETTY OFFENSES**

**A. Uniform Practice.** The rules governing the procedure and practice for the conduct of proceedings in misdemeanor cases, including petty offenses, before United States magistrate judges under 18 U.S.C. § 3401, and for appeals in such cases to judges of the district court, are set forth in the Federal Rules of Procedure for the Trial of Misdemeanors before United States Magistrate Judges.

### **B. Applicability of the Federal Rules of Criminal Procedure.**

(1) **Generally.** Except as specifically provided by the Federal Rules of Procedure for the Trial of Misdemeanors, the Federal Rules of Criminal Procedure govern all proceedings, except those proceedings concerning petty offenses for which no sentence of imprisonment will be imposed.

(2) **Petty Offenses Without Imprisonment.** To the extent the Federal Rules of Criminal Procedure are not inconsistent with the Rules of Procedure for the Trial of Misdemeanors, the magistrate judges may follow provisions of the Federal Rules of Criminal Procedure as they deem appropriate in conducting proceedings concerning petty offenses for which no sentence of imprisonment will be imposed.

## **LCrR 59: ADDITIONAL DUTIES OF MAGISTRATE JUDGES AND OTHER POWERS GRANTED BY STATUTE**

## **LCrR 59 ADDITIONAL DUTIES OF MAGISTRATE JUDGES AND OTHER POWERS GRANTED BY STATUTE**

(1) **Prisoner Petitions.** Except in cases in which the death penalty has been imposed, the magistrate judges may, unless otherwise directed, review civil

petitions filed by prisoners. Information regarding these civil petitions is set forth in LR 72.1C.

**(2) Pretrial Matters on Reference from Judge.**

(a) The magistrate judges are authorized, under 28 U.S.C. § 636(b)(1)(B), to conduct hearings, including evidentiary hearings, on dispositive pretrial motions filed by defendants, such as motions to dismiss or quash an indictment or information and to suppress evidence. At the conclusion of the hearings, the magistrate judge shall submit proposed findings of fact and recommendations for disposition of the motion to the judge to whom the case is assigned. Any objections to the magistrate judge's proposed findings and recommendations shall be processed in accordance with the provisions of 28 U.S.C. § 636(b)(1).

(b) The magistrate judges are also authorized, under 28 U.S.C. § 636(b)(1)(A), to hear and determine pretrial matters pending before the court which are not dispositive of the case. When appropriate, the magistrate judge shall enter into the record a written order setting forth the magistrate judge's disposition of the matter. Objections to the magistrate judge's order must be served and filed within fourteen (14) days after entry of the order. Upon consideration of the objections, the judge to whom the case is assigned shall modify or set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law.

If the order to which a party objects is oral, the parties must file, within fourteen (14) days after the objections are served and filed, a joint statement showing how the issues presented by the objection arose and were decided by the magistrate judge. Only those facts essential to a decision of the issues presented in the objection should be set forth.

**(3) Other Powers Granted by Statute.** The magistrate judges are also authorized to exercise all powers and perform all duties conferred or imposed by 28 U.S.C. § 636.